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Supreme Court of the United States

OCTOBER TERM, 1957-1958

No. 78 34

WILLARD UPHAUS, APPELLANT,

vs.

LOUIS C. WYMAN, ATTORNEY GENERAL,
STATE OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF
NEW HAMPSHIRE

FILED FEBRUARY 8, 1958
PROBABLE JURISDICTION NOTED APRIL 7, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 778

WILLARD UPHAUS, APPELLANT,

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STATE OF NEW HAMPSHIRE.

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NEW HAMPSHIRE

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[fol. 1]

**IN THE SUPERIOR COURT OF MERRIMACK COUNTY
STATE OF NEW HAMPSHIRE**

November Term, 1955

LOUIS C. WYMAN, Attorney General of the State of
New Hampshire,

v.

WILLARD UPHAUS.

Reserved Case—January 31, 1956

This is a petition to the Superior Court of Merrimack County, brought by the Attorney General of the State of New Hampshire, pursuant to Chapter 491, Sections 19 and 20 of the New Hampshire Revised Statutes Annotated. The petition was instituted because of the refusal of Willard Uphaus to answer certain questions and produce certain documents at two hearings held by the Attorney General, pursuant to Chapter 307 of the Laws of 1953.

The case was heard at the November Term, 1955, of the Superior Court for the County of Merrimack, before the court and without a jury.

During the hearing, exceptions were taken by the defendant to rulings of the court. The defendant also moved to dismiss the petition at the close of the hearing.

The Court denied the motion to dismiss, and found the defendant in contempt of court and sentenced him to the Merrimack County Jail until he purged himself of contempt. The defendant was allowed a stay pending appeal upon the posting of a bond in the amount of fifteen hundred dollars (\$1,500.00).

The defendant seasonably excepted to the denial of the motion to dismiss, and to the rulings and findings of the court, and all questions of law raised by these exceptions are reserved.

Such parts of the transcript of the hearing as relate to these exceptions, the court's rulings and findings, are to be printed as an appendix hereto.

Reserved and transferred.

The question of an order requiring the production of all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship, Inc., during the 1954 and 1955 seasons is reserved and transferred without ruling.

George R. Grant, Jr., Presiding Justice.

January 31st, 1956.

[fol. 2]

COURT RULINGS AND FINDINGS—January 5, 1956

"Willard Uphaus is found and adjudged in contempt of this Court. Willard Uphaus is ordered committed to the Merrimack County Jail and there to remain until purged of contempt.

George R. Grant, Jr.
Presiding Justice

January 5, 1956

Bail is set in the sum of \$1500.00

George R. Grant, Jr.
Presiding Justice"

TRANSCRIPT OF HEARING

Hearing at Concord in said County, on the 5th day of January, 1956, before Hon. George R. Grant, Jr., Presiding Justice.

APPEARANCES

Mr. Bowness: May it please the Court, our office is associated and has been associated with Dr. Royal W. France, Attorney, of New York. It is our understanding that the Attorney General has no objection to Dr. France participating in this action.

Mr. Wyman: That is correct.

Mr. Bownes: I would also like to introduce Dr. France to the Court. He is a member of all courts of New York State, a member of all Federal courts in New York State, and practises before two, three or four circuit courts, and also the United States Supreme Court.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: What is the order of procedure?

Mr. Wyman: May I say that this is a transferred petition, by agreement. It consists of two petitions—one to compel the production of certain books, records and documents relating to World Fellowship, Incorporated, a voluntary corporation with the operation of a summer camp at Conway-Albany, New Hampshire. That is for the years 1954 and 1955. We would like to know who was there. There is a very great deal more that I would like to say on the subject, but I don't know what the witness proposes to do today. He will not tell me the names we have asked for, so we have filed this petition before this Court asking that the same questions which were propounded to him, and other questions, be propounded here, and if he still refuses to answer, unless he pleads self-incrimination, that he be found in contempt of this Court. I would like to put him on the witness stand and question him, subject [fol. 3] to Your Honor's review, or have Your Honor question him, whichever meets with Your Honor's approval.

The Court: This case has had some judicial history. I am now showing you a petition. Is that what your office is now proceeding under?

Mr. Wyman: That is one thing. Brother Bownes has shown me the April, 1954, petition for contempt. It was on this petition here that we went to the Supreme Court, because while service of the subpoena was made in this state, notice of the Superior Court hearing was served on Mr. Uphaus in Connecticut. Subsequent to that there was another petition, which was filed in 1955, which, for all intents and purposes, asked for these same materials only as applicable to 1955. As to that petition, service was made in New Hampshire even to the order of notice of this court. Brother Bownes and Attorney France agreed that in hear-

ing this proceeding today, that in as much as the issues were identical in the two, for the purposes of adjudication they might both be heard together today.

Mr. France: Your Honor please, the Attorney General has correctly stated the general position in this case. I would like to make a few preliminary remarks before Mr. Uphaus takes the stand in this hearing. Before the Attorney General, Mr. Uphaus was asked a great many questions about his own associations, affiliations and beliefs. He answered all of those questions fully and freely, he stated that he was not and never had been a Communist, he stated that he belonged to two or three organizations on the so-called Attorney General List of the United States, or that he had contributed to them; he stated that he was motivated in his conduct by the teachings of Jesus Christ, that he was an active member of the Methodist Church, that his life has been spent in religious education as a teacher in the schools of the Y. M. C. A. and a teacher of religious education at Yale University; that his whole life has been devoted to the expression, in his words and conduct as far as he was able, of the teachings of the New Testament. He only refused to answer when he was asked to give a list of the guests at the World Fellowship camp. This he refused to do both on constitutional grounds and practical grounds. The Attorney General must make a showing before Your Honor that these questions have some pertinency to the inquiry which he is authorized to make. The Attorney General admits that he has no evidence that Dr. Uphaus is or ever has been a Communist, or that he is or ever has advocated the violent overthrow of government, or that any such doctrines have ever been taught at the World Fellowship camp.

Mr. Wyman: That is denied, Your Honor.

Mr. France: If I have misstated what the Attorney General [fol. 4] eral contends, he can correct me later, but I will read to the Court from the Attorney General's own statement to the legislature:—

Mr. Wyman: If Your Honor please, may I ask something? What is my brother doing? Is he in effect stating that his witness will not answer questions? There is as yet no issues before the Court for argument.

The Court: Are you now arguing your position?

Mr. France: I am giving Your Honor the background of the situation, because he will refuse and continue to refuse, on the first amendment grounds, to answer or to give a list of the guests at the World Fellowship camp.

The Court: Are you familiar with the contents of the transcript and the various matters printed for the Supreme Court in your client's appeal?

Mr. France: I am, Your Honor.

The Court: Is what is contained in that a restatement or a resume of what you are now telling me?—because I have read it very carefully.

Mr. France: There are certain additional things which I would like to call to Your Honor's attention, in view of the statement of the Attorney General. In his report to the legislature he stated that he was not going to conduct or had not conducted an inquiry which involved guilt by association. He said he believed in no single respect has this investigation supported this complaint. Now, when he comes to Dr. Uphaus—and the reason why he makes this report with regard to him, he says the world Communist conspiracy operates in devious ways, and whether Mr. Uphaus is an unwitting dupe or a conscious Communist participant, it appears that his reported association with, membership in, and sponsorship of Communist infiltrated groups and members over many years raises a substantial question as to the World Fellowship, Inc. and in a couple of letters to me,—do you mind my quoting from your letters to me?

Mr. Wyman: Not a bit.

Mr. France: In a couple letters to me, when I have written chiding him, he says "I have no alternative but to seek to obtain facts and names and backgrounds of individuals in your friend's camp." And he says, "Maybe none of them are Communists; maybe none of them were members of one or more organizations cited as subversive or Communist controlled. I don't know, but you must admit there is a curious . . . of backgrounds with this man among those whose names have already been disclosed. Any Communist association requires explanation in this day and age as far as I am concerned.

[fol. 5] In another letter, he says, "If you were investigating so-called subversive persons and activities in your state, would you fail to question affiliations with members and contributions to organizations cited as communist controlled by the United States Attorney General?" Your Honor please, this whole case rests upon the fact that Dr. Uphaus frankly, fully and freely acknowledges that he has contributed to two or three organizations on the Attorney General's list, and I will show to Your Honor that this list has no probative value whatever, that the courts have so held, and that the courts have also held that questions in an inquiry of this kind must be pertinent to the subject matter of the inquiry. The act of 1951 under which this investigation is authorized at all says, defining subversive organization, that it means any organization which engages in and advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, (sic) destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of the United States, or of the State of New Hampshire or any subdivision of them, by force or violence, and a subversive person is defined as one who advocates the overthrow of government by force or violence, or who is a member of a foreign, subversive organization. Your Honor, the point is this—the Attorney General doesn't contend, and he cannot contend that any one of the two or three organizations to which Dr. Uphaus admits belonging or probably agrees that he belongs to, if you want to put it that way, has ever been determined to be a subversive organization by the courts. On the contrary, the only organization which has so far been determined by judicial process, in that sense, is the communist party itself, and in that—even in that case the Supreme Court has granted a writ of certiorari to find whether the findings were justified, and whether the finding made under the act was constitutional, so what we have here is a mere suggestion arising out of the fact that organizations which have not been found by judicial process to be subversive—and the courts have held clearly that the subversive list of the Attorney General has no probative value whatever, and we are asked—this man

is asked to furnish the guest list of his organization and the names of non-administrative employees. Now, Your Honor, he cannot and he will not do this. First, because it would violate his freedom of speech, his freedom of association, his freedom of conscience. The reason why he cannot do it is because of the use which the Attorney General himself has made in this very case of names. He got hold of the names of a number of people who had been guests of World Fellowship. What did he do in his report to the legislature? He published these names, which became [fol. 6] public property, and he said that they were either—what was the expression?—the unwitting dupes, or members of the communist conspiracy.—Have you the exact quotation?

Mr. Wyman: I would suggest that you give the Court the exact quotation before you quote out of text any further.

Mr. France: On page 154 of his report to the legislature—or 155, he gives the names of people—some of them quite distinguished people, some of them representatives of foreign governments in this country, and he says that it is necessary to report their identities to the General Court, with the explanation that they may be the unwitting dupes of the communist conspiracy. This is a reflection on their intelligence and standing. Furthermore, it goes further than that. Names that are mentioned in one inquiry are circulated throughout the states, and the Attorney Generals throughout the states have cross-indexed files, so that any guest whose name is mentioned in that kind of proceeding immediately becomes suspect, even in his own place of residence.

Mr. Wyman: Your Honor, may I be heard when he gets through with his argument?

The Court: Are you making your argument—

Mr. France: I am now making—

The Court: May I finish my question, sir? Are you making an argument in advance, or are you outlining details which are frequently helpful in advance.

Mr. France: I am trying.

The Court: Well, will you answer my question?

Mr. France: I am making both an argument and stating

certain procedural matters. If Your Honor thinks the argument premature, I will stop at this point, although I have but one more sentence to add.

The Court: I do not wish to cut you off with only one more sentence, but I do believe that your argument is premature.

Mr. France: I bow to Your Honor's ruling.

The Court: Coming back to procedure, are we in agreement as to the statute under which we are proceeding?

Mr. France: Yes, sir.

Mr. Wyman: Yes, Your Honor.

The Court: What is it? May it be stated for the record?

Mr. Wyman: It is former sections 17 and 18 of the Revised Laws, 1942, Chapter 370; the Revised Statutes Annotated citation, I will have to go out and get for Your Honor. I do not have it right here.

(Discussion off the record.)

The Court: That is in the index.

[fol. 7] Mr. Wyman: That is Chapter 491, Sections 19 and 20, Your Honor.

The Court: Once again, what is it?

Mr. Wyman: Chapter 491, Sections 19 and 20. I would like to say in connection with that Section 20, when the statute says once the proceeding has been transferred to the Court it shall be treated as though it were originally commenced in the Court. The Supreme Court, in the Uphaus jurisdiction case in 100 N. H. held merely that you must make service of the petition in the Superior Court within the state, the same as you have to in any action. We still maintain that the matter is in here now and that Mr. Uphaus is in here now for questioning, just as fully as though we were in executive session in some room in the state house.

The Court: Are you now proceeding here on his failure to answer questions already proposed, or are we here now to rephrase or repeat the questions? Which?

Mr. Wyman: I am proceeding on the latter basis. I am proceeding on that. Before the legislative committee the witness has declined to answer questions for reasons which the committee believes to be unlawful. Therefore all the

committee can do is ask the witness to come before the Court. There the Court can have either the same questions asked of the witness, or additional questions, or may take over the questioning himself, if he wishes. The only reason that the questions and answers are set forth in the petition—and I am speaking of the 1954 petition—and I believe that is before you, on page 2—is to show the nature of the refusals which Mr. Uphaus has made, and the type of questions which were asked of him, and the basis of his refusals to answer.

The Court: All right.

Mr. Bownes: If it please the Court, on this question of procedure, first of all I think it should be stated for the record that Dr. Uphaus—neither Dr. Uphaus nor his attorneys are questioning or contesting the validity of either the so-called subversive act or the particular statute under which the Attorney General has cited him for contempt.

Mr. Wyman: I have not cited him for contempt, Your Honor please. Up to this time there has been no contempt.

Mr. Bownes: As Your Honor knows, this case does have a long history to it, and the case cited by the Attorney General in 100 N. H. does have some bearing on the procedural aspects of this particular hearing, because it is our understanding of the matter that this procedure is a judicial procedure, and as such must be conducted as any court proceeding, and is not ancillary or a continuation of the questions or interrogatories proposed by the Attorney [fol. 8] General in the executive session. I do not want to go into an extensive argument at this time on it, but the Supreme Court did say that the purpose of the petition to cite Dr. Uphaus in contempt is to grant to the Court jurisdiction over the subject matter and not to make the proceedings ancillary to and a mere continuation of the hearing before the Attorney General. I bring that up at this time because of the fact that one of the main bases of Dr. Uphaus' refusal, and his continuing refusal today to answer certain questions propounded by the Attorney General is based on relevancy and pertinency, and it is our position that the Attorney General must first prove that the questions are relevant and pertinent to the inquiry.

before Mr. Uphaus can be cited for contempt before the Superior Court.

Mr. Wyman: I would like about fifteen minutes in which I would like to be heard on the question of pertinency and relevancy, but as a procedural matter I question whether or not you would want me to do it now or wait until the witness has taken the stand and refused to answer, because counsel says that he is going to refuse.

The Court: I would like to keep our procedure as neat, clean and orderly as I can. In this procedure, since pertinency is raised by Mr. France or Mr. Bowles and answered by you in part, it has to be pertinent to something. What is the statutory procedure that you are following in answering the question?

Mr. Wyman: I am proceeding under Statutory Laws of 1951, and the two legislative continuations of an investigation—a fact finding investigation which directs me, acting as a legislative committee, to find out whether or not in this state there are any subversive persons or subversive groups or organizations presently in existence. The definition of Subversive Organizations is very clear. The definition of Subversive Persons in the statute is very clear. The actual definition of subversive persons and the language of the Supreme Court of New Hampshire in the Nelson case, 99 N. H. 33, makes it specific wherein it states, "The inquiry is not confined to an investigation of violations of the act but includes a determination of whether there are presently in this state persons whose acts are not criminal, but who are classified as subversive persons because they either, not knowingly and willfully, are committing or attempting to commit, or aiding in the commission of acts intended to overthrow or alter existing government by force or violence, or are advocating or teaching the commission of such acts even though they do not do so knowingly and willfully, or are members of subversive organizations, not knowing them to be such."

That is the end of the quotation.

The Court: May I ask, was there not a resolution in 1953 having to do with Chapter 588?

[fol. 9] Mr. Wyman: I was going to give this to you, Your Honor. In any event, the law is set out in the ap-

pendix of this report. This report is referred to in the transcript. The report contains the law which created the investigation, provided for it, and contains the basic statute. This is the legislative resolution of 1953.

The Court: Do you have a copy of this readily available, Mr. France?

Mr. France: Yes, I have, thank you.

The Court: I am now reading from page 264. Do I understand that when you first interrogated Mr. Uphaus you were proceeding under the authority created by the joint resolution of 1953?

Mr. Wyman: That is correct, Your Honor. That is the transcript which I have in my hand, and the questioning was on June 3rd, 1954.

The Court: You are referring to this authority, on jurisdiction of the Court, Revised Statutes Annotated, Chapter 491, Subsections 19 and 20?

Mr. Wyman: That is correct, Your Honor.

The Court: And do you so understand, Brother Bownes?

Mr. Bownes: Yes, that is correct. I think that our interpretation of it is a little different than that of the Attorney General.

The Court: That may be, but that is the basic reference.

Mr. Wyman: There are a number of reasons why I would like to argue why I think Your Honor should order this man to answer.

The Court: Well, he hasn't refused at this point, actually.

Mr. Wyman: That is right.

The Court: I think we will have to wait for that until some later time. You may proceed.

The Clerk: Have you the return of service of the last petition here?

Mr. Wyman: I think I have. You mean the order of notice?

The Clerk: Yes.

Mr. Wyman: Isn't there a statement in the file to the effect that service was accepted?

Mr. Bownes: That is right. It was on a motion.

Mr. Wyman: Yes. Here is the motion. It states, "Hearing is not desired."

The Clerk: All right.

WILLARD UPHAUS, sworn by the Clerk of Court;

Direct examination.

By Mr. Wyman:

[fol. 10] Q. What is your name?

A. Willard Uphaus.

Q. Where do you live?

A. New Haven, Connecticut.

Q. Are you an ordained minister?

A. I am not.

Q. Mr. Uphaus, you received in the course of days past two subpoenas, so-called, duces tecum, to bring with you certain records and documents, and produce them for examination by the Attorney General, acting as a legislative committee, did you not?

A. That is right.

Q. Do you have those books and records and documents with you?

A. No, sir, I do not.

Q. Did you bring them to the courtroom today?

A. I did not.

Q. Do you have any intention at all of producing them?

A. I do not.

Q. For what reason?

Mr. Bownes: We object on the ground the question is not pertinent and relevant to the inquiry, and there has been no showing as yet as to any reason under the acts in question why the documents called for should be produced. We also object to the question on the ground it violates the first amendment of the Federal Constitution, and the fourth—part one of article four of the Constitution of the State of New Hampshire.

Mr. Wyman: May I be heard, Your Honor, on the question of pertinency?

The Court: Had you finished?

Mr. Bownes: I had. There is also part one of article nineteen of the New Hampshire Constitution, which goes to the freedom of speech, and article five, part one, of the New Hampshire Constitution.

The Court: Is that in place of or in addition to?

Mr. Bownes: In addition, Your Honor please. I am sorry.

Mr. Wyman: Your Honor please, Mr. France has made the statement that this was an interference with religious rights—

The Court: Just a moment. I want to make sure. The question to which there is objection is why the witness has not brought certain documents into the courtroom?

Mr. Wyman: My brother has asserted that the asking of questions relative to these documents was not relevant to an investigation of subversive activities. Is that so?

Mr. Bownes: Yes, that is correct. We feel, as the record shows and as Mr. France has told the Court, that since Dr. Uphaus has answered all questions relevant to himself that now, under the recent ruling of the Supreme Court, the Attorney General must make some showing in the first place of relevancy and pertinency.

The Court: Didn't the case in the Supreme Court turn on the point of service and jurisdiction? Isn't that what that case stands for to a lawyer? If you want a service and jurisdiction case, that is it.

[fol. 11] Mr. Bownes: That is right. The Court also held that in a proceeding in a contempt matter it was a judicial proceeding and not ancillary to the Attorney General's investigation.

The Court: Let me hear the question.

(Question read.)

Mr. France: May I add that I don't think we need be too technical. The reason why he has not produced them goes to the entire reason of objections which have been stated by counsel, for one thing.

Mr. Bownes: I think that this question fairly raises the question which Your Honor has before you.

The Court: For that reason I am going to overrule your objection. You may answer, sir.

Witness: I understand the question is "Why?"

Q. For what reason do you refuse?

A. Your Honor, there are a number of reasons why I

have refused to do this. I think there has been no question in my life to which I have given more time and thought and prayer; no question on which I have consulted more people than this question as to whether I should provide the information that the Attorney General has requested. I have been moved first by my religious convictions, by my inner conscience, by the direct teachings of the Bible that it is wrong to bear false witness against my brother; and in as much as I have no reason to believe that any of these persons whose names have been called for have in any sense hurt this state or our country, I have reason to believe that they should not be in the possession of the Attorney General. In the next place, the social teachings of the Methodist Church teach us clearly and specifically that we in the United States should stand up and uphold civil and religious rights; and, in particular, it condemns guilt by association, and my counsels have made the point that that is the crux of the question. Next, Your Honor, I hold before me here this precious Bill of Rights to which reference has been made. I have grown up under that. I have for years been nurtured under that. I believe in it. I am a son of American soil and I love my country; and I love this document and I propose to uphold it with the full strength and power of my spirit and intelligence. Then, finally, this morning I believe that in taking this action I am literally following the instructions and leadership of President Eisenhower. Let me, Your Honor, give you the statement that our president made when, only a few weeks ago, we celebrated Bill of Rights Day. This is the exact statement of our President Eisenhower: "Bill of Rights Day ranks in the forefront of our days of commemoration. On this day the people of America remember and honor the passage of the Bill of Rights. The first ten command-[fol. 12] ments—amendments—here they are: By the Bill of Rights our people are guaranteed the most precious of liberties, freedom of speech, press and religion; the right peaceably to assemble and to petition government; freedom from unreasonable search and seizure, and the right of privacy; judicial safeguards of life, liberty and property; the right to a fair trial, and protection against excessive punishment. These rights, indispensable to our rights, and

security reaffirm our belief in the dignity of the individual on this day. I hope that citizens throughout our land will renew in their hearts and minds a devotion to these freedoms and a determination to defend them against all forms of attack. Let us also resolve to strive for a peaceful world in which all mankind will share them." Of course, in the Protestant church there is what we speak of as the priesthood of our peers. In the final analysis, after one has prayed, after one has talked with friends, after one has thought of all aspects, he must, before God, make up his own mind or his own heart and conscience as to what he shall do. For a year and a half the question has been before me, and my answer in all conscience must be "No"; Your Honor.

Mr. Bownes: If Your Honor please, may I take an exception to your overruling our objection? May that be noted?

The Court: I thought that your objection had been withdrawn and that that is why the witness answered the question.

Mr. France: I didn't intend to withdraw our objection; I merely stated that I thought the question that the Attorney General propounded, coupled with our objection raised the question that Your Honor has to decide, but I did not intend to withdraw our objection.

The Court: Your exception is noted then.

Mr. France: I would like to point out at the point that there has been no showing of pertinency or—

The Court: Sir, your exception is noted. We haven't come to the question of pertinency yet.

Q. Do I understand that those are your entire reasons for refusing to produce the documents?

A. Those are the essentials.

Q. One, in substance, is you do not want to turn informer?

A. I don't want to involve innocent people in the Attorney Generals' network.

Q. When you say, "innocent people" you mean people whom you yourself consider individually to be innocent?

A. That is right.

Q. You don't in fact know whether they are innocent or not?

A. I have very good reason to believe that they are from my knowledge and association.

Q. Every single one of them?

A. That would be impossible—to testify as to each and every one of them.

Q. Do you know of your own knowledge, Mr. Uphaus, whether the membership of these individuals in organizations cited by the National Attorney General or the House [fol. 13] Committee on Unamerican activities as subversive or communist controlled was knowing or unknowing on their part?

Mr. Bownes: I object on the same ground I objected on before—namely, on the ground that there has been no basis or showing of relevancy or pertinency, first, that the question violates the first and fourth amendments of the Federal Constitution; also Articles four, five and nineteen of the first part of the Constitution of the State of New Hampshire. I would like to object on the further ground that the Attorney General has laid no basis for the question.

Mr. Wyman: Now, Your Honor, I would like to argue the question of relevancy, if I may. I would like to argue it as fully as Mr. France was permitted to argue his initial opening statement.

Mr. France: It seems to me, Your Honor, that this would be the appropriate time to argue the question of relevancy. I would like to continue my argument on pertinency and relevancy after the Attorney General has spoken.

Mr. Wyman: I assume Your Honor is in doubt as to this being the proper time to argue?

The Court: Well, I was not in agreement as to this being the time, but if you gentlemen are, we will proceed with the arguments on relevancy.

Mr. Wyman: Very well. I would like to say first that the implication that has been made that this is an inquiry into the freedom of speech or freedom of religion, but particularly freedom of religion, is completely false. The report of the Attorney General to the legislature on Janu-

ary 5, 1955, is a part of the record in this case. The transcripts which are before Your Honor, including the first, second and third transcripts of the questioning of Willard Uphaus are a part of this case. Now, if Your Honor will turn to page 170 of the report to the legislature—

The Court: That is this red one?

Mr. Wyman: Yes, Your Honor. You see opposite page 170, from an issue of "Economic Justice" a cartoon, advertising a picture of Jesus Christ, stating "Reward, For Information Leading to the Apprehension of—then the picture—Jesus Christ. Wanted for Sedition, Criminal Anarchy, Vagrancy and Conspiring to Overthrow the Established Government. Dresses poorly, said to be a carpenter by trade, ill-nourished, has visionary ideas, associates with common working people, the unemployed and bums. Alien—believed to be a Jew. ALIAS, 'Prince of Peace,' 'Son of Man,' 'Light of the World' etc. Professional Agitator, Red beard, marks on hand and feet the result of injuries inflicted by an angry mob led by respectable citizens and legal authorities." That cartoon appeared in [fol. 14] an issue of "Economic Justice" in the early thirties; and shortly thereafter it appears in this record that Willard Uphaus and Arnold Johnson became employed by the National Religion & Labor Foundation. This organization was one from which this man, Mr. Uphaus, it also appears, was ousted because of his participation in Communist front activities without its consent in 1950. There appears at page 162 of the report, Your Honor—starting at page 162—a list covering the better part of a page and a half of organizations cited either by the Attorney General or the House Committee on Unamerican activities, as controlled, in which this witness has at one time either been a member or a sponsor. In addition to this, this witness attended certain conferences—particularly, the Warsaw Congress, and he addressed the assembled delegates at Warsaw, Poland, receiving favorably (sic) publicity in the Communist papers. In the first transcript, on page 38, it appears that the United States was attacked as having used germ warfare in Korea, and that no protest appeared from Willard Uphaus. A picture of Willard Uphaus at this conference, as one of the American delegation, ap-

peared in the "Daily Worker" in the issue of December 11, 1954, and that is set for (sic) on page 167 of the report. Now, Your Honor, in 1953—I want to say one other thing, if I may. Mr. and Mrs. Weller, who founded World Fellowship—and acting for the legislature, I will say that I don't know just what World Fellowship is yet. I am trying to find out. But one of the works of Mr. Weller appears on page 134 in part, entitled, "Why Should I Not Be A Communist":

"I am ashamed that I and other liberals
Devote our powers to proving we are not
Communists—

As if a Communist is evil, dangerous, to be
avoided,

In place of being praised for great achievements
and ideals.

A Communist, to me, is just an urgently-in-
earnest Socialist—

Why should I not BE, openly, a Communist,
regardless of all dangers?

Why not join with my true Brothers, everywhere
who give their all

Unselfishly to serve Humanity, and greatly
to advance the Cause of World-Wide One-ness,
Peace and Brotherhood!"

That piece was dated at Conway, New Hampshire July 23rd, 1950.

[fol. 15] Mr. Uphaus came to World Fellowship in 1952 and his association and affiliation with these so-called subversive organizations—and they have been cited by one, two or three of the governmental agencies, and it has even been admitted by the witness at the present time, although he says that he doesn't know of anything subversive about them, and in addition to that, Your Honor, it appears that in 1953 and 1954—at the 1953 and '54 seasons, as set forth on page 137 of the report, not less than nineteen speakers at World Fellowship had connections or affiliations with either the Communist Party or with one or more of the organizations cited as subversive or Communist controlled in the United States Attorney General's list. I submit to

Your Honor that as far as the legislature is concerned, it directed the Attorney General, acting as a legislative committee, to find out whenever there were any Communist; former Communist, Communist sympathizers or fellow travelers in this state, at any time, to find out what they are up to—whether they are talking behind curtains about over-throwing the government or whether they are having philosophical discussions. I don't know, but I have to find out and I have got to tell the legislature what they did. The record is replete with possible disloyalties to this country. Whether the citizen likes it or doesn't like it, it is just replete with it. I have no choice but to find out for the General Court what they are up to in this state. This witness is notably and completely contemptuous of all this. He had absolutely no intention of coming to court with these papers, and he has known for months and months and months that he was coming. He didn't bring them, and he isn't going to produce them no matter what Your Honor tells him. I ask Your Honor, not only for this state but for the whole country, to make it clear—not only for Willard Uphaus but for all witnesses in this type of situation, where the state is only seeking to find out—not charging with prosecution or prosecuting—I say I hope that you will make your decision clear so that it will stand out as a beacon light to this sort of perpetration and show it once and for all its proper place. I do not concede in view of this record that there is not need to make offers of evidence. In fact, the whole question of whether the state or a legislative committee must proceed to offer evidence to establish relevancy is before the Supreme Court in the Sweezy case. This record as well as that, beyond all question, repeatedly, again and again places this witness' conduct, associations and activities in New Hampshire under substantial suspicion of subversiveness. I say to Your Honor he should be compelled to produce this information which the state has asked for. We don't know how many Communists or former Communists there are up there. I say we have a right to know; we have a right to [fol. 16] find out the facts. I know and I respect Mr. Uphaus' disinclination to be an informer. Many people have felt that way from the time they are little children,

and it is taught to you as an American when you are growing up, but in this situation the freedom of speech which has been sacrosanct for years in our Bill of Rights is modified because of the fact that the state is trying to find out if there is any subversion around. He says that he is not pleading self-incrimination. He says that he is not a Communist. Yet there is a record of his association with persons and organizations which is replete with Communist activities throughout the years. A man is known by the company he keeps since the earliest days of the common law, I submit, and I ask Your Honor to direct this man to answer this question.

Mr. France: Your Honor please—

The Court: Just a minute. We have been going on for some time. I think we will take a short recess at this point.

(Recess 10:45 to 11:00 a.m.)

Mr. France: If Your Honor please, before proceeding with my argument, I would like to make it clear on the record, and I think the Attorney General will agree, that the witness at the hearings before him produced all the documents which he was requested to produce, including a list of the speakers at the World Fellowship camp, and that he answered all questions regarding himself and his own beliefs and affiliations, and that the matters which he declines to produce are (1) a list of guests—or persons who were guests at the World Fellowship camp, (2) the names of non-administrative employees—such as cooks and ground keepers, and (3) his private correspondence. Anything beyond that, Dr. Uphaus has been willing to answer, and I think he has answered fully and to the satisfaction of the Attorney General. At least, no further questions were asked.

Mr. Wyman: I don't agree with that at all, Your Honor.

Mr. France: Did you want to interrupt?

Mr. Wyman: No, but I don't want the statement made to the Court that I was satisfied. The record shows what it shows. That no further questions were asked.

Mr. France: I just wanted it understood that is what Mr. Uphaus is refusing to produce. Now the Attorney

General, in attempting to lay some foundation for this, has made statements which indicate the complete lack of basis. The only reference that I could hear that he made to anything connection (sic) Dr. Uphaus with any of the activities which relate to the purposes of this act—namely, an intent to advocate the overthrow of government by force and violence—the only possible reference in anything which the Attorney General has said is, first, he refers to a hearsay statement in his report—in his own report, in [fol. 17] which he says—

The Court: What is the page?

Mr. France: It is page 170. This is his own report, in his own language. He says in the third paragraph from the bottom, "In 1950 Uphaus was reportedly ousted from the National Religion and Labor Foundation because of his participation in Communist front activities without the consent of the Foundation." We don't know reportedly by who, where or how, or what the activities were. The only other thing that I heard that ever remotely referred to the purposes of this inquiry was a reference to one Charles Weller, made in 1950,—a poem which he quoted from by Charles Weller, made in 1950 before this witness ever became associated with World Fellowship. If Your Honor would read that poem in its context, you would see that this elderly idealist, now in his 80s, living in Florida, was not talking about political communism at all. Communism is a word which has many different meanings. One of the meanings is that which is contained, I think, in the fifth chapter of Acts, in which the early Disciples of Jesus are referred to as being persons who shared everything in common. We have no way of determining, from anything that the Attorney General has said, in what sense Mr. Weller was using the expression, and certainly it is in no way connected with this witness here. Now I, since the Attorney General has brought in matters which are not exactly evidence but hearsay—I want to read from three letters—two former pastors of Dr. Uphaus in the Methodist Church and—

Mr. Wyman: Is this an issue? Does it make any difference what somebody else says about Mr. Uphaus?

Mr. France: Does it make any difference what the At-

terney General says about Dr. Uphaus being ousted? I didn't object.

The Court: I thought this was an argument directed to the relevancy of a pending question. Am I correct on that?

Mr. France: That is right, Your Honor. What did the Attorney General do? He brought in some alleged picture of Jesus, something reportedly alleged about this witness, and I think that that opens the doors to show Your Honor what kind of man this man really is who is being pilloried by the Attorney General of the State of New Hampshire.

Mr. Wyman: Your Honor please, no one is being pilloried here. I referred only to matters which are already in this case. I do not think that my brother should be allowed to read any letters which are not in evidence in this case. I have simply asked him questions. I have not pilloried him. This is being brought before the public by Mr. France.

Mr. France: He is being pilloried by your asking the [fol. 18] Court to find him in contempt. You have made statements which are not sworn testimony as to this man's activities. I should like to have the Court know what kind of man he really is. Three men, two former pastors and one the present pastor of the Methodist Church say he really is a man of sincere religious convictions. Dr. Uphaus is a man who has spent his life practising and teaching the teachings of Jesus Christ; a man who could not possibly advocate the overthrow of government by force and violence, and to make the kind of insinuations and the kind of remarks which the Attorney General has made, both in his report and to this Court—

The Court: For the purpose of determining the propriety of the pending question, you may read the letters, if you wish.

Mr. France: The first letter is from J. George Butler, now minister of the South Park Methodist Church in Hartford, Connecticut. It is addressed, "To Whom it May Concern", and reads as follows: "It is a pleasure and a privilege to say a brief word about the religious convictions of my long time friend, Willard Uphaus. From 1936 to

1945 I was pastor of the Summerfield Methodist Church, New Haven.

Shortly after I came to Summerfield, I received Dr Uphaus into membership in my church, by letter of transfer from the Congregational Church. He had been a member of the Church of the Redeemer, New Haven, and as he was then in my parish, he found Summerfield Methodist Church more convenient.—During the eight years or so that I served as his pastor, I can truthfully, and humbly state that I have never had a more consecrated, or self sacrificing layman than Willard Uphaus. He was on call for deeds of kindness and mercy, a veritable wheelhorse whenever I as pastor called on him. Anyone who dares say that he uses his religion as a cover up for his social concerns is a liar and the truth is not in him. I wish the Christian Church had a hundred men as deeply spiritual and devoted as Willard Uphaus. We don't need to agree with everything he says or does. That is not the point. The point is: he is a dedicated Christian, and in our Methodist fellowship, Methodists think, and let think. We believe in the fundamental Protestant principle of private judgment.—I am happy, and proud to think that for eight years I could serve as his pastor and friend in Christ. Sincerely yours, J. George Butler."

Another former pastor, now at Ohio Wesleyan University, writes: "As pastor of the Summerfield Methodist Church in New Haven, Connecticut, from 1946 to 1948, I had the opportunity to become well acquainted with Willard Uphaus, who was a devoted and active member of that church. His genuine concern for that local church, in which he was licensed to preach, was expressed by his [fol. 19] faithful attendance, support and leadership. I came to know him to be a dedicated Christian, earnestly seeking to find expression for the Christian ideals of love and justice in the modern world. Willard Uphaus has long taken a forthright stand on the rights of labor, better race relations, the cooperative way of life, and world peace. The members of Summerfield Church knew his position on these matters and regarded it as an expression of his Christian conscience. As far as I know, no member of the Church believed that the social ideals and activities of

Willard Uphaus were motivated by any other factor than his religious beliefs. And as his pastor, I never had cause to doubt that his motivation was the Christian faith. I have treasured his warm and kindly spirit, which was of great help to me and to many others in the fellowship of the church. Rev. Robert Fichter, Assistant Professor of Philosophy and Religion, Ohio Wesleyan University." Then there is added, "My ministerial connection is with the Ohio Conference of The Methodist Church." Then from his present pastor of the same church—"I have had a number of conversations with Dr. Uphaus, have visited in their home, and find that his concern for peace and the reform of the social order appears to stem from his Christian faith and experience. It is true that he is more radical than most contemporary Christians in his view and language, and not at all concerned about his associations. But in this, too, he has a firm foundation in the gospel and in the life of Jesus Christ. Our Lord's outlook was most radical in His day and it is well known that He associated freely with men and women held in question by the church people of that day. He was openly accused of eating with publicans and sinners, of being a friend of wine bibbers and harlots, Matthew 9:11:11:19; Luke 7:34. Publicans or tax-collectors for Rome were considered quislings and traitors by their people, yet one of them, Matthew, left his tax collecting and became a disciple of Jesus. Another, Zaccheus, was converted from his ways by Jesus.—It may well be that Willard Uphaus and others like him, who do not fear as Christians to associate with people in disrepute in our day, will do much to advance the Christian cause. Certainly we who gain strength from the Christian faith have nothing to fear and possibly much to gain from men and women like Dr. Uphaus. I hope he will long continue as a member of our church and that both he and we may in this fellowship grow in Christian grace and faith."

Now, Your Honor, I have here a rather extensive brief. The questions of law in this case are not simple, and I would like to hand this up to Your Honor right now, and I will be happy to give a copy to the Attorney General, because I will refer to certain citations in it. This is a

brief which the Attorney General has already had, which [fol. 20] Your Honor might like to look at, and also which was submitted to the legislature.

It is now established beyond any doubt by the Supreme Court of the United States as a matter of law in United States vs. Rumely, which is referred to in our brief, that before questions can be asked and the witness held in contempt for not answering them, they must be shown to be pertinent to the subject of the inquiry. In that case the respondent was asked to give the names of persons to whom he had distributed certain books. He declined to give the names—

The Court: What sort of hearing was this?

Mr. France: This was a hearing for contempt of a congressional committee. The question was whether he should be punished for contempt under a statute which related to lobbying, for refusing to present books or the names of customers of books of his organization. It has many similarities to this; because in this case here, Dr. Uphaus is required to produce books or names of customers of the World Fellowship camp, and I may say by reference right here that there has been no showing and no indication of any authority resting in Mr. Uphaus, who is an employee of the corporation, to present the names of guests. Furthermore, on practical grounds as well as on grounds of conscience, this would be a most disastrous precedent. If the Attorney General is not going to discriminate, he should find out what employees of hotels in New Hampshire are members of subversive organizations. He should find out if the managers of the Bretton Woods Hotel and other hotels in New Hampshire have been or are members of the so-called subversive organizations, and then he should call upon them to bring into court the names of their guests, of people who come in to the State of New Hampshire. It would be an unprecedented thing, Your Honor. In this case of Rumely, in which the boundaries of such an investigation are clearly stated, the court refused to reach the question of constitutionality because they held that pertinency had not been shown, but Justice Douglas, concurring, does reach the ground of constitutionality and says, "While the respondent was willing to

give to the committee of congress the total income of his organization he refused to reveal the identity of the purchasers of the books and literature because under the Bill of Rights that is beyond the power of your committee to investigate. A requirement that a publisher disclose the identity of those who buy books or pamphlets or papers is indeed the beginning of the surveillance of the press. Once a publisher must give the names of the purchasers of its publication free press will disappear." That may be so in this case. The power of investigation is limited. Inquiry into personal and private affairs is precluded. And so is any other matter with respect to which no valid [fol. 21] investigation could be had. Since Congress could not take the action requiring of the respondent what it demanded, it could not take the first step ending in either confinement or imprisonment. In my brief I have cited a number of cases which Your Honor will have an opportunity to read, which make it perfectly clear—including the expression of Chief Justice Warren in the Emspak case. It must be pertinent to the subject being investigated. What is the subject matter being investigated? It isn't the Attorney General's subversive list; it is force and violence, or the advocacy thereof, in the overthrow of government.

Now, the second point to which I wish to call Your Honor's attention is the fact that a person belongs to an organization on the Attorney General's list or has supported it in no way suggests that that organization is in fact subversive. The case of the Joint Antifascist Refugee Committee v. McGrath was a case in which the question arose with regard to whether the Attorney General could list that and two other organizations as subversive, and the Supreme Court held that this could not be done until the organization had had a hearing by due process of law, and that decision stands to this day. Not one of the organizations on the Attorney General's list of so-called subversives has been found by the courts to be subversive in fact or to advocate the overthrow of government by force and violence. On the contrary, of the two hundred and something organizations which are roughly called the subversive list, the appellant (sic) division of the Supreme Court

of New York, in the second decision as just handed down in the Gwinn amendment case, so-called,—the Gwinn amendment case was an amendment to the appropriation act which required that a tenant in a Federal housing project make an oath as to whether they did or not belong to the organizations on the Attorney General's list, and the Supreme Court of Wisconsin has declared in very strong—

The Court: What did the appellant (sic) division case hold?

Mr. France: The appellant (sic) division of the New York Supreme Court held that of the list containing names of approximately two hundred organizations, in alphabetical order, including all organizations which had been listed previously by the Attorney General under six categories, only one of them was subversive. That is, only one of the entire list was reported to be subversive. The Gwinn amendment and resolution of the Housing Authority—and I am quoting now from a report in the New York Times—"Referring in clear and unambiguous language to organizations designated as subversive by the Attorney General—no evidence was adduced which justified their interpretation under the doctrine of practical construction as authorizing a demand that a tenant certify that he was [fol. 22] not a member." The Court in the New York case decided on procedural grounds. In the Wisconsin case which I cited on page 18 of the brief, the Supreme Court of Wisconsin says that the entire list and the making of the list is unconstitutional, as a basis for tenants having to make a statement. The Court says, "It is easy to foresee how those in control of government could use such a device to effectively undermine and render impotent any political party or other organization which opposed their continued hold on government by simply labelling them as subversive, if the courts were powerless to provide a remedy." Still reading from page 18, "In addition to these procedural safe-guards, embodied in the aforescribed published rules of the Attorney General, the decision of the United States Supreme Court in Joint-Anti-Fascist Refugee Committee vs. McGrath unequivocally holds that any organization which has been designated by the Attorney General as subversive is entitled to court review of

such designation." The statute here does define it. In Webster's International Dictionary, the definition of subvert is give (sic) as "to overturn from the foundation; to overthrow; to ruin utterly; to destroy", and it defines the adjective "subversive" as "tending to subvert; having a tendency to overthrow, upset or destroy." In the case of *Wieman vs. Updegraff* cited in our brief, Mr. Justice Clark, who himself was the original Attorney to issue the list, condemned its use as the basis of a loyalty oath in the State of Oklahoma, and stated that the list was never intended for more than the very limited purpose of one piece of evidence, and the case makes it therefore perfectly clear that this list and the way in which it is being misused has become a menace to the liberties of association of the American people. Now, what are the organizations to which Dr. Uphaus acknowledges belonging? There is the American Peace Crusade. He has a right to belong to a crusade for peace. He believes in peace. The organization has never been found to be subversive in the sense that the Supreme Court requires. Another is the Committee for the Protection of the Foreign Born. This committee is now engaged in hearings before the Subversive Activities Control Board, and I am confident that when judicial hearings are had this organization will be found never to have engaged in anything remotely resembling the overthrow of government by force and violence. The third organization is the American Soviet Friendship League.

Again, that is an organization devoted to the purposes of peace, and there has never been a finding that this organization advocates or that anyone associated with it has condoned the thing that is now complained about by the State of New Hampshire. So what do we have? We have a man who states under oath that he is not and has [fol. 23] never been a Communist; a man who states his religious beliefs and a man who has produced everything that the Attorney General has asked him to produce, until it came to the question of naming other people. Now, I have indicated some of the practical as well as the theoretical reasons why it would be undesirable for him to name guests, whose names would then become a part of

the Attorney Generals' network which is circulated throughout the country.

The second practical reason is that if the camps and hotels in New Hampshire are going to be subjected to this kind of thing, and their employees asked whether they belong to any of the organizations on the Attorney General's list, and similar questions, people will certainly hesitate to register at the World Fellowship camp, Bretton Woods Hotel, or any other place in the State of New Hampshire, where they may be subjected to having their names brought into this kind of an inquiry. Now, Dr. Uphaus has freely told the names of the people who were acting in any executive capacity. He has refused to give the names of the people who are the ground keepers, cooks, dishwashers, and what have you. Why? On practical grounds. If the Attorney General subpoenas one person from that local community—and there is no suggestion in anything that he has said of any knowledge he has that any of these people are politically minded people in any way whatever. If any of these people were summoned to the Attorney General's office, I am sure that the World Fellowship camp would never be able to get another employee to work at that camp in that area. Now, I don't think that Your Honor will need to reach the constitutional question. I think that I have made it perfectly clear, and this brief—which Your Honor will have an opportunity to read—makes it even more clear that the questions asked are not pertinent, and that no foundation has been laid to show that they are pertinent to an inquiry relating to the overthrow of government by force and violence. Dr. Uphaus has stated that he had attended—I think with two exceptions—every meeting conducted at World Fellowship, that not one word was said there advocating the overthrow of government by force or violence, Marxism, Leninism, or anything of that sort. He is willing to state, and I am quite sure that he has stated in the inquiry, that as far as he knew not a single one of the guests who registered there was a Communist, and certainly none of them had ever been convicted under the Smith Act or any other act. So it comes down to the very narrow question of whether he should give names. Now, if we do reach the

constitutional question, it is perfectly clear that any such attempt to secure information from him would violate the basic principles of our constitutional law. In the case of *Terminelo vs. Chicago*, in 337 U. S. 1, the question arose over the speech made by a man who evidently had a Fascist [fol. 24] tendency. The speech was certainly one with which neither you nor I nor the Supreme Court agreed at all. I am sure that the speech would be as repulsive to me and to you as it was to the members of the Supreme Court; yet the Court declared that the vitality of our religious and political institutions in our society require free . . . it is only through free debate and the exchange of ideas that government remains true to the will of the people; the right to speak freely and to promote programs is therefore one of the chief distinctions that sets us apart from a totalitarian regime.

The Court: How did that case reach the Supreme Court?

Mr. France: That was in 337 U. S. 1, over a conviction of the man for having engaged in the speech which was said to violate an Illinois statute. The former Secretary of State Dean Acheson has recently written a book called "A Democrat Looks at His Party", in which he acknowledges that he was a part of an administration which he thinks made a mistake in starting this whole business in which the Attorney General here is now involving us. George F. Kennon, a distinguished statesman and representative of government in a former legislature says that our attempt to deal with the problem represents a danger within ourselves—a danger that something may occur within our minds and souls which will make us no longer living by the principles of those by whose efforts this republic was founded and held together, but rather like the representatives of that very power we are trying to combat. Mr. Justice Brandeis in *Almot vs. United States*, in 277 U. S., made this very pertinent comment: "The greatest danger to liberty lies in the insidious encroachments by men of zeal, well meaning but without understanding."

Mr. Wyman: May it please the Court, Mr. France has read some letters over objection. Before I comment on the law that my brother urges upon the Court, which is typical of ninety-five percent of my brother's argument,

absolutely inapplicable, I pray, Your Honor, the right to read, for the purpose of the issues before the Court, which I believe is offered on the character of the witness, the following:—and this is all sworn testimony, under oath.

The Court: When and where?

Mr. Wyman: This testimony was given September 19th, 1955.

Mr. Bownes: May I inquire by whom, and where?

Mr. Wyman: I will answer the "where". It was given by a witness in the State House. I offer it merely for consideration upon the question of character of the witness, relating to which my brother has, over objection and without exception, been permitted to read two lengthy letters from ministers.

[fol. 25] Mr. France: Now, Your Honor, I don't know what this quotation is, but I object to its being read to this court. It is obviously the statement of some faceless person who is not subject to cross examination by me or by counsel for Dr. Uphaus, and I think it would be entirely improper for the Court to allow any statement, if it relates to Dr. Uphaus, made by such a person to be admitted in this court. I may say that nineteen of the outstanding religious leaders of this country have indicted this practise. They say that the informer is a public accuser when functioning under government protection or privilege. The informer acts with immunity. Up to now, the informers who have been procuring the information have not been cited in, and we have reason to believe that a number of informers have not spoken the truth. There are sworn admissions by some of them and conflicting statements by ministers of the Christian church and others on the truthfulness of the statements, signed by Bishop of New York, John Lord, a resident minister of Boston, Bishop Gilbert, Dean Pike, and a number of other religious leaders throughout the country.

Mr. Wyman: Your Honor please, my brother has read statement after statement. I am not offering the statement in evidence, but only in the same way that other statements have been read, and I think that I am entitled to read one statement for the Court's consideration on this issue. I don't know what it has to do with the relevancy

of the issue. I don't believe it makes any difference if the witness is of good character or bad character. I don't believe this case is anything like the Rumley case. There a witness was asked for a mailing list. It was not a question of subversive (sic) conduct or relative to the freedom of speech. This record is replete with Communist sympathizers. Whether my brother likes the characterization of the Attorney Generals' list or not, I think I am entitled, if he has read letters, to read a statement into the record.

The Court: Of course, one reason for limiting that is that the record could be endless, and for that reason I will sustain his objection relative to reading prior testimony.

Mr. Wyman: Exception. Now may I read a letter from a minister in New Hampshire? This is a letter addressed to the Governor of this state.

The Court: What is his name, please?

Mr. Wyman: His name is Mickels—Rev. Harry C. Mikels, of the Church of the Good Shepherd, Newport, New Hampshire. The letter is addressed to Governor Lane Dwinell.

The Court: You will give it to Mrs. Snyder afterwards?

Mr. Wyman: I will, Your Honor. The letter reads as follows: "Newport, N. H., 29 December, 1955, Governor [fol. 26] Lane Dwinell, Concord, New Hampshire. Dear Sir: Today I received a letter from the Religious Freedom Committee, Inc., New York, N. Y., regarding the case of Dr. Willard Uphaus and Attorney General Louis C. Wyman. The last paragraph of the letter urged me to write you concerning my concern with "this invasion of liberties."—First, of all I do not know anything about this organization, but do know some of the details of the case. Dr. Uphaus appeared before a group of us ministers and laypeople at our last session of the Annual Conference and attempted to present his case. He was so evasive that I was embarrassed for him. He could not give direct answers as to his purpose in this so called "World Fellowship" group. I have done a little investigating and have read a great deal of reading concerning him and his work. Therefore I have come to the conclusion that I must go along with our own Attorney General in his prosecution of the case. Secondly, I must ask myself the question, are

we the people of New Hampshire unable to preserve our liberties without the help of an outside organization? Thirdly, I along with many, many others fought for these liberties that we do enjoy, and I am not in favor of giving them up to some pacifists who do not love their families, their Church and their country enough to do likewise. Therefore, more power to Mr. Wyman, and God give us more men who are willing to face the opposing forces in order that this country may escape communism and other forces that seek to rob us of our real liberties. Sincerely, Rev. Harry C. Mikels."

Now, Your Honor, the recent elections in France clearly indicated that that country is even more heavily infiltrated with Communists at the present time than in the past. In this state, if nowhere else, let us be vigilant to know who the Communist sympathizers are and who the Communist members are. If I knew, Your Honor, of any manager of a hotel in this state who was a member of the Communist Party and was holding meetings, I would not hesitate to ask what went on at those meetings. This witness is only a witness. He is not a defendant here until he declines to answer the questions. I have submitted two perfectly apparent questions dealing with subversive activities or possible subversive activities. I have here excerpts of an address by this witness in 1951 after his visit to Warsaw, which I am perfectly willing, on the question of relevancy, to examine the witness on. That deals with revolution and talk of revolution. I am willing to question the witness as to all types of materials circulated by this party in 1955. We haven't got the 1955 petition here. We are dealing only with the 1954 petition. The 1955 petition will involve the question of those who were there this year. I believe that there were former Communists there this [fol. 27] year. I believe that there was literature circulated there this year. I believe it is a basis of the questioning of the witness. I am not making an offer of proof, because this is a case where the information is obviously competent and relevant on its face. However, if Your Honor feels that that is not the case, I am perfectly willing and glad to make an offer of proof. This man has dilly-dallied for a year and a half. This man has refused to tell the State

of New Hampshire what is going on within this state. I simply want to say that it is unthinkable to me that we are not entitled to know what actually has been going on within this state, and Your Honor please, if people, because they have had former affiliations with the Communists, should hesitate to register in the hotels in New Hampshire, I think that the State of New Hampshire is the gainer, and I hope that they don't. Now, in the two cases suggested on the question of law—Joint Anti-Fascist Refugee Committee vs. McGrath and Wieman vs. Updegraff, may I say that the Joint Anti-Fascist (sic) Refugee Committee, which is one of the organizations on the famous or infamous Attorney General list cited as Communist controlled—the organization in that case, with other organizations, petitioned the Court that it should be heard as to whether or not it was in fact Communist controlled before a list was furnished to the Federal agencies for the purpose of determining who should work for the Federal government and who shouldn't. It went up on the pleadings, and nowhere in the pleadings did the Joint Anti-Fascist Refugee Committee state or affirm that it was not in fact Communist controlled, and the Attorney General allowed it to go to the Supreme Court solely on the pleadings.

Now they are back before the control board on the question whether or not they are in fact or are not in fact Communist controlled. We don't use the list for the purpose of establishing whether or not anyone is a Communist or whether an organization is Communist controlled. They are not all tried in the courts. They are simply a starting point for the questioning. If a person has been affiliated with one or a half dozen of those organizations and he moves into this state, isn't it reasonable to wonder what he is up to. In Wieman vs. Updegraff which my brother quotes as having the statute held unconstitutional because of the fact it didn't apply, it was held that in order to affix criminal liability to a defendant they must show that he knew of the subversive (sic) purpose of the organization of which he was a member. Our statute says that before any criminal liability can apply it must be proved beyond a reasonable doubt either that a person was subversive,

knew and/or calculated it himself, or was a member of an organization which had a subversive purpose, and "subversive" is clearly defined in the statute, and he must know [fol. 28] that it is subversive. Now in spite of that fact, our Supreme Court has said that the legislature has directed the legislative committee to find out who in the state are members of subversive organizations even if they do not know them to be subversive organizations, even if they are not criminal. And there is no charge made at this point in this proceeding that Willard Uphaus is subversive.

We can't get the facts. Mr. Uphaus has refused to give the evidence. I say that the State of New Hampshire and the general court are entitled to the evidence, Your Honor, and that on the record, the question of relevancy or pertinency of the questions to him with respect to all these Communists or former Communists and organization—if I have to, I will take the first transcript at page 12 and page 32 and read to Your Honor the questions put by myself to this witness on June 3rd, 1954:

(Record read, beginning with question: "If you have any idea how many organizations you have been active for which have been cited as subversive—" and ending with the answer, "Well, there are organizations that don't ask persons to become members. They ask whether you believe in their general objectives or whether if you don't believe in their general objectives do you believe in the specific thing that we are doing now. It doesn't always follow that it is a membership which obligates one to subscribe to the total program of the organization.")

Then Your Honor, turning to page 32, talking about when he was in the Soviet Union in 1950. I asked, "Did you make any arrangements at that time about helping the Communist objectives in the United States? Answer, "Oh, no. Ridiculous." Question, "Well now, the World Peace Council was Soviet controlled, wasn't it?" Answer, "Soviet influenced, but I didn't feel that it was Soviet Controlled."

... We have the reports, we have this man's own testimony, we have ample evidence in the record to the present time now before you to establish that it is relevant to the investigation of subversive activities in this state to know what went on at World Fellowship—who were there, and whether they were either Communists or former Communists, and I submit that this witness should be directed to answer the question.

Mr. France: If Your Honor please, I know you don't want to go on with this endlessly, but when the Attorney General states he has Dr. Uphaus' statements under oath, the witness has stated under oath that nothing went on which was subversive or which advocated the overthrow of government by force or violence, or about Marxism or Leninism, or anything else. I have been present for two sessions. I think that the Attorney General has made amply [fol. 29] clear that what he relies on is the witness' membership in certain organizations, or contributions to them. In the case of *Schachtman vs. Dulles*,—and I read from page 20 of my brief—the Court of Appeals from the District of Columbia condemned the use of a listing by the Attorney General in the denial of a passport. Justice Edgerton, in his concurring opinion said, "The Attorney General's list was prepared for screening government employees, not passport applicants . . . In other connections, the list has not even any competency to prove the subversive character of the listed associations." I submit, Your Honor, that the Attorney General's own remarks and his own presentation show the complete bareness (sic) of any suggestion that there has been anything done by World Fellowship or by Willard Uphaus which comes within the terms of the statute directed to the forcible overthrow of government.

The Court: May I ask this question? With respect to the last citation, I notice you read from a concurring opinion. Did the decision of the court turn on the thought expressed in that portion of the concurring opinion?

Mr. France: Well, one of the questions before the Court was whether the Attorney General could refuse to grant a passport arbitrarily, and as I understand the case, the decision patently hinged on the fact that the basis of the

Attorney General's refusal to grant the passport was Schachtman's membership or alleged membership in one of the organizations on the Attorney General's list.

The Court: Did not the Attorney General in that case make a decision based solely, apparently, on that list, rather than starting from that list? I haven't read it. I am just asking you.

Mr. France: I think, certainly, that that was one of the main reasons for the refusal of the passport. I think that there was some evidence in the case with regard to the particular organization with which Schachtman was alleged to be connected.

The Court: Now you gentlemen have, ably and with some apparent sense of conviction, argued this legal point for quite a while. Now, may I go back to the question.

(Question read, "Do you know of your own knowledge, Mr. Uphaus, whether the membership of these individuals in organizations cited by the National Attorney General or the House Committee on UnAmerican activities as subversive or communist controlled was knowing or unknowing on their part?")

Mr. Bownes: To clarify it in my own mind, I thought that the question was, "Will you produce the documents?" by Mr. Wyman. The stenographer or Mr. Wyman can correct me if I am wrong. The question itself did not specify the documents and I assumed that Mr. Wyman was referring back to the citation for contempt—asking for Dr. [fol. 30] Uphaus' production of the guest list, Dr. Uphaus' correspondence, and a list of employees. Then, without objection, perhaps by error, upon his refusal to produce the documents, there was the question why he would not produce the documents. We made our objection on constitutional grounds, and the question of relevancy. I thought it was from that point that the question of relevancy was taken up. I did not know that there was a further question.

The Court: I would assume that some question and some objection set off the arguments which we have had for the last hour. Now, what I want to know is, what is the question, and what was the objection. I don't want it to get lost.

Mr. Bownes: I thought the question was, "Will you produce the documents?"

The Court: Will you read the question, and the objection.

(Question read, "Do you know of your own knowledge, Mr. Uphaus, whether the membership of these individuals in organizations cited by the National Attorney General or the House Committee on Un-American activities as subversive or communist controlled was knowing or unknowing on their part?")

Mr. Wyman: That question was asked, Your Honor, because prior thereto the statement had been made by the witness that as far as he was concerned, everything was all right up there.

The Court: That is the pending question then?

Mr. Wyman: Yes, that is the pending question.

The Court: And you object?

Mr. Bownes: Yes, we object. Obviously he cannot testify whether or not a member was knowing or unknowing.

(No answer.)

Q. By the words "knowing or unknowing" with respect to the people who have been at World Fellowship, you have been or were members of one or more of the organizations cited on the Attorney General's list, do you know whether or not any of those people know of any subversive purposes in connection with any of those organizations?

Mr. France: No objection to that question.

A. I cannot (sic) tell what they knew with respect to their affiliations with respect to these various organizations.

Q. Do you know, Dr. Uphaus, whether or not they were members of any of these organizations?

A. I think in some instances I did, but that was not on the registration card. We never asked, "Are you or are you not a member of certain organizations?"

Q. On the subpoena (sic) duces tecum for both 1954 and 1955, were you not asked to produce correspondence between yourself as the executive director of World Fellow-

ship and the people who came there to make speeches, or to take part in panel discussions?

[fol. 31] That is right.

Q. You refused to produce that?

A. I do refuse to produce that.

Q. Would some of those have been members of organizations which are on the Attorney General's list?

A. It is entirely possible.

Q. Can you tell us—without asking for any names—whether one or more of those people were members or former members of the Communist party?

A. That I cannot. I cannot tell you whether they were or not.

Q. Has Paul Robeson been there?

A. He has not.

Q. He has not?

A. No, sir.

Q. Have you corresponded with Paul Robeson?

Mr. Bownes: Just a minute. Your Honor please, that is one of the main points in the case—that is, his refusal to tell. I suggest that you rephrase your question, and that Dr. Uphaus keep in mind that you are to differentiate between whether you cannot tell because you do not know, or whether you do not want to tell. I would like to have that made clear.

A. Not since my relationship with World Fellowship.

Q. Well, wasn't that correspondence with Robeson called for in the 1954 subpoena?

A. I think possibly it was.

Q. Is Paul Robeson a Communist?

A. That I do not know.

Q. Now, Dr. Uphaus, will you tell us if Dr. Edward Barsky was one of your speakers in 1953?

A. 1953 or 1954.

Q. Whichever it was, wasn't he the chairman of the Joint Anti-Fascist Refugee Committee?

A. I believe that is correct.

Q. Do you have any correspondence with Dr. Edward Barsky?

A. I think not.

Q. So that there is nothing available for furnishing under your subpoena from the point of an exchange of letters between you and Dr. Barsky?

A. I happened to know that he was vacationing in Maine, and I talked with him on the telephone. There was no correspondence with Dr. Barsky.

Q. Has Bert MacLeech been sponsored at World Fellowship?

A. In 1953, I believe.

Q. Was he a member of the Communist party?

A. I am unable to say, sir.

Q. Don't you really know whether or not—hasn't he ever told you whether or not he was a member of the Communist party, Mr. Uphaus?

A. Indeed he has not.

Mr. Bownes: Who is the gentleman you referred to?

Mr. Wyman: Bert MacLeech.

Q. Are you aware of the fact that both the House Committee on Un-American activities and the Washington State Committee on Un-American activities have investigated the same Bert MacLeech?

Mr. Bownes: If Your Honor please, we object to that on the ground it has no probative value and is not relevant to the question now before the Court.

Mr. Wyman: I offer to prove that Bert MacLeech, according to the citations, frankly testified to his membership in the Communist party, using an alias.

[fol. 32] The Court: The question was directed solely to the witness' knowledge of the fact, is that correct?

Mr. Wyman: That is correct, Your Honor.

The Court: He may answer.

A. No. I knew in a general way that he had been subjected to questioning, but I did not know the details.

Q. You knew that he had a Master's degree and Doctor's degree from Harvard University?

A. I believe that is in his biographical record, yes.

Mr. Bownes: Again we object to the question as having no probative value, and not being relevant.

The Court: Do you mean that you object to the academic honors obtained by this gentleman?

Mr. Bownes: No, Your Honor. For our purpose, it is just to keep the record clear. We object to all questions which we say have no bearing on the relevancy of the main objectives of this inquiry.

The Court: He may answer the question about the degrees received by this gentleman. Or if he has answered, the answer may stand.

Mr. France: I would like to inquire if the Attorney General thinks there is anything subversive in holding a degree from Harvard.

Mr. Wyman: My answer to that is, definitely not. I hold one myself.

Q. Do you know anything of the aliases under which Bert MacLeech has been known in the past?

A. I couldn't possibly give them.

Q. Do you know if he was ever known as Bert Jackson?

A. I couldn't testify to it under oath.

Mr. Bownes: To save time, may we note our objection to the whole line of questioning about other individuals, on the ground that the questions are not relevant, not pertinent, and have no probative value, Your Honor?

The Court: Are the questions directed to the issue of relevancy?

Mr. Wyman: Yes, Your Honor. I want to clear it up, and by way of clearing it up at this point—

The Court: All right, the question and answer may stand.

Q. I suppose that you have read this report in so far as it applies to World Fellowship.—This is page 146, the third paragraph, of the report.—This refers to MacLeech. He testified before the California Committee frankly as to his Communist Party activities, admitting that he had given instruction based on the "History of the Communist Party, Soviet Union (Bolshevik)" and "He said he was known as Burt Jackson in the Communist Party. He admitted being acquainted with Communist Party functionaries such as William Schneiderman, Betty Gannett,

[Vol. 33] and Pettis Perry (who have since been convicted of conspiring to advocate the overthrow of the government). Leech admitted his connection with the Communist Party Control Commission and explained that the Control Commission kept track of the enemies of the Party. Leech testified there was no conflict between Communist Party ideals and orthodox religion. When asked at the 1943 hearing if he was then a Communist, he said, "I am the spokesman for the Party in San Diego at the present time." Now I ask you, is that true or false, according to any information which you may have?

Mr. Bownes: First we object to the quotation because it is incomplete. It should start, "The 1943 California Report on pages 71 and 72 provided the following information concerning Burt S. MacLeech." So we are concerned with a report which is fifteen years old.

Mr. Wyman: That makes no difference. Once a Communist; always suspect.

Mr. France: If Your Honor please, the reports of these investigating committees have no probative value at all in a court of law. They are the opinions expressed by investigating committees, and I don't think that that kind of evidence furthers the subject of pertinency at all. However, as I am standing, Dr. Uphaus has already stated that he didn't know any such facts about this particular person.

The Court: What is the question?

(Question read.)

Mr. Bownes: We object to the form of the question. The Attorney General read a lengthy paragraph containing parenthesis and quotations, and I do not see how any person could answer, "Do you know whether that is true or false?" I think he went on with another sentence.

The Court: Will you read the question again?

(Question read.)

The Court: You may answer.

A. When I asked Mr. MacLeech to come in 1953 to speak at World Fellowship, I did not know about this. I knew that he had been in Great Britain for a period of time

and that he had made a study of the British labor movement and wanted him to speak to our people on the British labor movement. There was no reference in any way, shape or form with respect to Communism, the overthrow of state or government, or anything like that. He came to do a specific task; which he performed.

Q. Was he there this summer?

A. He was not.

Q. Was he there last summer—that is, in 1954?

A. No.

Q. He was there only in 1953?

A. As a person to speak, that is right.

[fol. 34] Q. Did you have some correspondence with him before he came to World Fellowship to speak?

A. That is possible. I do not remember.

Q. Is that correspondence in existence, if it did exist? Do you keep files of the correspondence with your invited people who speak at World Fellowship?

A. Complete files, yes sir.

Q. Are you aware of the fact, and do you understand that that correspondence is under subpoena duces tecum today?

A. Yes.

Q. And you refuse to produce it?

A. I refused to produce it, yes.

Q. Regardless whether the man was or was not a Communist?

A. That is correct.

Mr. Wyman: Your Honor please, I am not offering these excerpts for the truth or falsity of the statements contained therein. I am only examining the witness on the basis of whether or not there is sufficient basis, in Your Honor's opinion, on the record as it stands for asking him to produce information about other people who were there, and other correspondence. I do not know what he asked this man to speak about. I do not know why he asked him to speak. I do not know whether it was anything which referred to subversive activities, but he has refused to produce it, and I believe that we are entitled to examine it.

Mr. France: Your Honor please, may I interpose at this moment the complete improbability—assuming all the evil things which Mr. Wyman has in his mind—the complete improbability that Dr. Uphaus is going to sit down and write something subversive in a letter asking someone to come up here and advocate the overthrow of government by force and violence, and that person will respond, "That is what I am going to do." That is absolutely improbable, I submit.

Witness: There are no references to his many religious associations in his attack on him.

Mr. Wyman: May it please the Court, it is of course obvious that Mr. Uphaus isn't going to write someone and ask them to come and make a speech about overthrowing the government by force and violence. At the same time the advocacy of a doctrine that we lay down our arms in favor of a few sticks and stones and paving the way for the coming of the Soviet Union is just as much an advocacy of the overthrow of government . . . I want to show that the advocacy of this so-called peace crusade is for the purpose of achieving a quicker and a cheaper occupation by the Soviet Union and Communism. It is the same under our law as the reverse, and it is for the purpose of our finding out what the facts are that we are asking for this information. He refuses to answer. He refuses to produce the documents we have asked for. I think that the legislative committee is entitled to know who was there, so that we can then find out what went on. The very integrity [fol. 35] of the witness is at stake. He says that nothing went on. I submit that we are entitled to find out the facts.

The Court: Generally, we have three strata or layers of inquiry?

Mr. Wyman: Yes.

The Court: Who was there, what they wrote to him, and the identity of the non-policy making employees?

Mr. Wyman: He has testified that there were six maintenance people about the estate; two from New Hampshire and four from without the state. We have asked for their names. He has refused. The strata of inquiry, yes, relates to the guest list—people who were there in 1954 and 1955 as guests, and third, the speakers—both those who were

invited to come and make speeches, and people who were there and did make speeches, though they were not specifically invited there to do so. And those people who are employees. We want to know who they were for the purpose of asking them what went on. I am astounded that we were not able to get this information without this publicity, because had we gotten the information and made our investigation, and there had been nothing wrong, there would have been no publicity.

Mr. France: Now we have got down to it. He says people who advocate sticks and stones instead of atomic bombs are subversive persons. In other words, the whole Quaker movement, the whole Pacifist movement in this country is what the Attorney General really wants to investigate, and has said so in so many words—people who are advocates of peace, who are opposed to universal military training, and whatever else, are subject to inquiry, under this question of the advocacy of the overthrow of government by force and violence; these pacifist people who may be rightly or wrongly opposed to our foreign policy as being based too much on military strength, and too little or moral suasion; these people have a right, from their point of view, a duty to oppose military armaments and to uphold those measures which they think will induce peace. Our president himself, at the Geneva conference last summer, made utterances which under some circumstances may be considered by some people subversive, when he said he believed in the good faith of the leaders of the Soviet Union. Now, whether he believes it now, or whatever he believes, the fact is he had a right to believe it. The fact is that the Quakers and the pacifists have a perfect right to argue that we do not need so much armaments as we need moral rearmament.

I think now we have come to the crux of this case—the real object of the Attorney General's interest in Dr. Uphaus' connection with the American Peace Crusade, as to which there is not one single word that it falls within any [fol. 36] part of the perview (sic) of this statute, and I don't ask Your Honor to agree with Dr. Uphaus' pacifist convictions, I don't ask Your Honor to say that he is right, but I do ask Your Honor to say that every American citizen

has a right to criticise the foreign policy of his government; every citizen has a right to urge, if he wishes to, disarmament or any other lawful practice. And I go further in saying that Dr. Uphaus believes, and I am inclined to believe that he is right, that under the statement which the Attorney General has just now made, Jesus of Nazareth would be compelled to answer questions which were against His conscience before this Court, because He, of all men, urged that we use other means than violence in achieving our purposes—the use of love and brotherhood, for which Dr. Uphaus stands. I feel certain that Your Honor now sees what is really behind the whole attempt of the Attorney General.

Mr. Wyman: Your Honor please, in the name of everything that is reasonable and fair, I resent the smokescreen of this man's assertion. I am not arguing for the military. Of course one is free to be against our foreign policy, and one is free to advocate peace; but one is not free to advocate a peace crusade with the intent that it be a prelude to the occupation of our country by the Soviet Union. The American Peace Crusade was cited by Brownell, and before him by Clark, as subversive and Communist controlled, and I ask Your Honor in the name of relevancy whether or not what this man has said doesn't come about as close to slander of the Attorney General, charged as the chief law enforcement officer of the state, as is possible; and I ask him to withdraw it.

Mr. France: I will withdraw it if the Attorney General will withdraw his statement as to people who want to use sticks and stones rather than military armaments. I accept his statement that he believes that Dr. Uphaus or anyone else has a right to advocate peaceful co-existence, or anything he chooses. There is not one word of testimony here that there is any organization with which Dr. Uphaus is connected which has advocated peace for the reasons the Attorney General has stated—so that the Soviet Union could occupy this country. There is not a scintilla of evidence to suggest it except that the Attorney General has listed the organizations, but the question has not been tried out or tested.

The Court: We are going to recess until two o'clock. At that time I wish we could have more questions and answers, or questions and objections, because I think that each of you has put on the record how you feel in the matter, and the authorities to back up your positions.

Mr. Wyman: May I ask just one question before we [fol. 37] recess, our Honor?

The Court: Yes.

Q. Mr. Uphaus, this summer, 1955, in presiding at World Fellowship, Incorporated, did you offer a toast to the revolution?

A. Of course not.

The Court: All right; we will recess until two o'clock, Gentlemen.

(Recess 12:30 to 2:00 p.m.)

Mr. Wyman: Your Honor, I am sorry if some of the remarks this morning tended to be a little emotional, and that we got away from the issues. I submit that the issue has been presented, and I pray Your Honor's ruling.

The Court: Is there a question now pending?

Mr. Wyman: I believe the witness has been asked to produce documents which had been subpoenaed for 1954 and 1955, for the World Fellowship, and he has refused, and has made the statement that he hasn't brought them here and is not going to bring them here.

The Court: So that there will be no confusion, would you be willing to restate your request to the witness?

Q. First, Mr. Uphaus, the subpoena for the year 1954 asked you to bring with you the following files, papers and documents: Guest registrations for World Fellowship for the 1954 season. Confining the request at the moment to that particular information, I understand that you have refused, for the grounds stated, and do you still refuse to furnish that information?

Mr. Bownes: Your Honor please, we would like to object. Our objection will be on the same ground to all the questions. Do you wish, for purposes of the record, to have us state our objection to each question, or wait until all

the questions have been asked and then state our objection to all of them?

The Court: I would prefer that you conduct your own case, but I will make this observation for the sake of the record and clarity; it might be better if you would make your individual objections.

Mr. Bownes: All right. Then we object to the question asked and to the production of the documents just asked for by the Attorney General, on the following grounds: 1) There is no evidence at all to form any kind of a basis for a showing that the question asked is pertinent and relevant to the Attorney General's investigation under the so-called subversive activities act. The only evidence given to support the question asked was strictly hearsay and therefore clearly not admissible in a judicial procedure. The only affirmative evidence was by Dr. Willard Uphaus himself, under oath, that there was no advocacy of the overthrow of government by force and violence. The second objection is that the question is not, and cannot—on [fol. 38] the state of the record—be found to be pertinent and relevant to the inquiry. Third, the question constitutes a mere fishing expedition, and as such cannot be allowed. The fourth and final ground of our objection is that the question itself violates Dr. Uphaus' individual rights as guaranteed to him under the first, fourth and fourteenth amendments of the Constitution of the United States government and under Articles four, five and nineteen of part one of the Constitution of the State of New Hampshire; and on the further ground that there has been no showing by the Attorney General that the witness, Dr. Willard Uphaus, has the authority to produce the information requested.

The Court: I will overrule your objection, and the witness may answer, or respond to the request.

A. The answer is no, I did not and cannot bring the records.

Q. Just so that we can be very clear on this, when you say, "No, I did not and cannot bring the records," didn't you also testify in a prior proceeding that there are such records in existence?

A. I so testified.

Q. So there are such records in existence?

A. Yes, that is right.

Q. On three by five cards, isn't that right?

A. That is right.

The Court: This is the registration list or guest register for a particular year?

Mr. Wyman: For the summer season of 1954.

The Court: Here in New Hampshire?

Mr. Wyman: Here in New Hampshire.

The Court: On the premises in Albany, New Hampshire?

Mr. Wyman: Yes, in Albany, New Hampshire. That is where actually World Fellowship and its buildings are located.

The Court: All right.

Q. Where is this information physically located at the present time?

A. It is in an office in New Haven, Connecticut.

Q. When you came here today you knew, did you not, that you were going to be asked to produce this information today?

A. That is right.

Q. Is this a very bulky bit of information?

A. It is not.

Q. So that you just plain aren't going to produce it, is that it?

A. I cannot in good conscience do it, sir.

Mr. Wyman: I ask, Your Honor, that he be ordered to produce the information, so that we may know whether or not World Fellowship is or is not a subversive corporation, under the Laws of 1950-1951. It is my duty to find out and report.

Mr. Bownes: I understand Your Honor overruled my objection. I would like to have an exception noted on the record.

The Court: Yes.

Mr. France: May I add that since rather important [fol. 39] questions of law are involved, and we have submitted a rather extensive brief, perhaps Your Honor would defer passing any sentence or judgment in regard to this

question until after you have had an opportunity to study those briefs.

The Court: I think I shall defer anything further at the moment with respect to the immediate question and request, sir. Is there anything further?

Mr. Wyman: This is, I understand, to be held in abeyance for the moment, Your Honor?

The Court: No. I thought the request was proper, and therefore I have overruled the objection. If you have any further questions to Mr. Uphaus, I suggest that you put them to him now.

Mr. Wyman: All right, Your Honor.

Q. Mr. Uphaus, you had for the 1954 season at World Fellowship, Inc. some employees?

A. That is right.

Q. And the subpoena for the year 1954 asked for the names of those employees, did it not?

A. That is right.

Q. Do you have the information as to those names?

A. We have in the office the information.

Q. Will you give the Court that information now?

A. I cannot in good conscience do so.

Mr. Bownes: We object to this question, Your Honor, on the same grounds we objected to the prior question.

The Court: I would like to hear from the witness more particularly what the employees did, or rather what their duties were on the premises.

Witness: They took care of the grounds, they cooked the meals, they kept the rooms cleaned and in order, and they did the work that is usually involved in running a center of that sort. They had no relationship to the program. They were non-professional employees—yes, non-professional, non-executive, non-directional employees.

Q. Were any of them ever members of the Communist party, to your knowledge?

A. To my knowledge, they never were.

Q. Do you know whether they were or were not, at any time, Mr. Uphaus? Do you know?

A. I do not know.

Q. Do you know whether or not any of them have ever been members of any of these organizations on the Attorney General's list?

A. I would assume not, but I do not know.

Q. You do not know?

A. I do not know. They were not politically minded people.

Mr. Wyman: I do not want to go into the matter of Communism as being political. The legislature has said it is not in so far as this investigation is concerned.

The Court: With respect to the identification of these people for the year 1954, I am upholding your objection, [fol. 40] and I am ruling that the witness does not have to divulge those names.

Mr. Wyman: Exception, Your Honor.

Q. In the subpoena for the year 1954, Mr. Uphaus, there appeared a request for correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship, Inc. in the 1954 season. Is there such correspondence in existence?

A. There is, yes.

Q. Do you have it with you?

A. No, sir, I do not.

Q. Do you have any intention of producing it here if the Court orders you to do so?

A. I cannot in good conscience do it.

Mr. Bownes: If Your Honor please, I would like to have the Attorney General ask a question so that I can make my objection for the record. He has asked Dr. Uphaus if he has any intention to produce it, but he has not asked him to produce it.

Q. Will you produce it?

Mr. Bownes: I object to that on the same grounds as previously stated.

Mr. Wyman: I ask Your Honor to order him to produce it.

The Court: Would you care to elaborate on the nature of the correspondence or further identify it?

Mr. Wyman: In the report, which is part of the record in the case, there appears names of speakers during the 1953-1954 season. The 1954 season speakers' names appear in detail, in so far as we know them. Those are the principal speakers, on page 136, and that list includes among others Florence Luscomb, Dirk Struik, Loyd F. Worley, Janice Roberts, Dr. Edward Barsky, Rev. Lee Ball, and so forth. The records of affiliations with subversive activities or Communist controlled organizations of these individuals appears in further detail in the report under each of their individual names. It is submitted, Your Honor, that the legislature is entitled to know upon what basis they were requested to be present, and on what subject they were requested to address themselves, and further details concerning their presence in New Hampshire. . . .

Mr. Bownes: I have a further objection to reference by Brother Wyman, in which he states the report is a part of the record. It is our position, and we object to the introduction of the report as part of the record because it is clearly hearsay, and it is our understanding that this is a judicial proceeding, governed by the usual rules of evidence and standards of judicial proof.

Mr. Wyman: I do not believe that that is so for a minute, and I don't believe that the Uphaus case in the Supreme Court so rules. This is a continuation of a proceeding before the Attorney General, as far as the witness is concerned. The only reason that the witness is here is because the Attorney General does not have the authority under [fol. 41] the statute to compel (sic) the witness to answer, but the Court does. The witness is here, and the statute provides that the Court may put the same questions to the witness or the Attorney General may put the same questions to the witness in the presence of the Court. The questions are relevant on their face, to determine whether or not this organization is subversive or Communist controlled within the meaning of our own statute in New Hampshire.

The Court: Then do you want it back and forth to whatever extent there was any through the mails between the witness and the various persons, or do you want merely the requests to them to appear and speak?

Mr. Wyman: I don't want to make the subpoena void for indefiniteness, nor do I want it to appear that I want all correspondence since the beginning of time. Section four says, "All correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship, Inc. during the 1954 season." It may or may not be clear but it is intended to cover only correspondence concerning the 1954 season.

Mr. France: Your Honor, may I ask you to ask the witness whether there was in any of this correspondence any suggestion of anything relating to the violent overthrow of government, or that any person was requested to make a speech relating to such a subject?

Mr. Wyman: Your Honor, I object to that request. The witness may say no, but the best evidence is the correspondence. This is a subpoena duces tecum.

The Court: I assume that these people wouldn't have come if they had not been invited?

Witness: Your Honor, the most of them come on invitation. Many know me personally, and might happen in as guests and be some of our best speakers. They can be from both groups. We had some speakers with which there was no correspondence involved, because they were vacationing in New England, came by, and offered to speak. But there is correspondence with respect and in relation to a number of speakers. I will gladly answer my counsel's question, if I may.

The Court: I think I will have him ask the question rather than have me ask it. Did they select their own topics, Mr. Uphaus?

Witness: Certainly. Generally they fitted into a program and came to speak on questions that I had suggested; or if they were celebrated ministers or lawyers, they just talked of their life's experiences. They talked sometimes without a closely expressed topic. Sometimes they just sat down for an evening around the fire and expressed their— [fol. 42] told stories of their lives, their interests, and their problems.

Mr. France: Your Honor, I will ask the witness, and will let you rule on it. Dr. Uphaus, was there in any of this correspondence with any of these speakers anything sug-

gesting that they discuss the overthrow of government by force or violence, or any topics relating to the overthrow of government by force and violence, or that they discuss Marxism or Leninism?

Witness: Indeed there was never anything like that.

The Court: Any further questions?

Mr. Wyman: Well, . . .

The Court: That is, on the question of correspondence.

Q. (By Mr. Wyman) How much of this correspondence is there for 1954?

A. Well, I would have to try to remember. Possibly with fifteen or twenty persons, or something like that.

Q. Have you looked it over, after getting this subpoena duces tecum?

A. Yes, I read over quite a lot of it, sir.

Q. Can you tell us, if you know, how many of the fifteen or twenty persons with whom the correspondence is in existence have been members of the Communist party in the past?

A. Indeed I could not.

Q. Do you know how many of them have been members of, or active for organizations on the National Attorney General's list?

A. I could not give that number.

Q. Merely for the purposes of examining you now, and not involving any question whether or not this report is a part of the record, I now show you this report which you say you have read, and starting with the name George Abbe, there are about six pages of persons of affiliations which were cited as either subversive or Communist controlled by the Federal Government. Isak, is any of the correspondence called for by this subpoena correspondence with any of those individuals?

Mr. France: May it please the Court—

Mr. Bownes: We again object to the question on the same ground stated before, and on the further ground that it could not possibly have any probative value. This man has had the correspondence with him since he was subpoenaed (sic) in 1954. It is perfectly obvious that he could have destroyed it and answered in court that he did not have it.

The fact that he has not done so is proof that he is only here because of his conscientiously held ideals. The correspondence is two years old, and we suggest it can have no bearing on the Attorney General's investigation.

Mr. France: I would like to ask the Attorney General if he speaks advisedly when he says all of these organizations are cited as Communist controlled, or is that loosely spoken?

• Mr. Wyman: May it please the Court, I do not consider [fol. 43] that the committee for the purpose of this sort of procedure is obliged to answer any question asked by any witness. The committee is supposed to ask the questions, as I understand the procedure, but I have no objection to replying to my brother attorney by saying that the list of organizations referred to appears in the appendix in the report, and they are organizations which were cited by the National Attorney General, and that particular list, in compliance with a Federal loyalty security program which was established in a previous administration. It is not a list which includes the list cited by the House Committee on Unamerican activities, which acts under a resolution vastly broader than the citations of the Federal Attorney General under the national security program. However, as a starting point for asking just what people are doing in New Hampshire, I believe that it is perfectly competent to ask this witness if any of the people with whom there was this correspondence, still in existence, were on those lists to his knowledge.

If Your Honor feels that it is required, for the purpose of establishing that it is relevant, I submit very sincerely, Your Honor please, if I might put this illustration, that the legislative committee is authorized to inquire of an Elks group what its membership is, except at that point and without anything more undoubtedly Your Honor would inquire just what that has to do with subversive activities. Like the Rumley case, it would then become incumbent, with nothing more on the record, to furnish some evidence that there was no Communists or former Communists in that organization. In this case, World Fellowship, Inc. reeks with Communists, former Communists, or persons having

affiliations with a number of organizations on the Attorney General's list of subversives.

Mr. France: I object to that statement. There is no evidence—no sworn testimony to the effect that that—what the Attorney General is talking about is a report that he made to the legislature, most of which is based on hearsay, and not on evidence which would be admitted in court. The only evidence which appears under oath in regard to these activities of this organization is the testimony of the witness, who has affirmatively stated that there has been no advocacy of the prohibited doctrines at this camp.

Mr. Wyman: The witness' credibility is in issue. That is the reason of the subpoena duces tecum. If Your Honor wishes me to question him as to the 1955 year, of which I have questions of a different type to ask, I would be glad to do so, but I submit and pray Your Honor's ruling that this is fairly relevant to the investigation which I am authorized to carry out by our legislature.

The Court: All right. He may answer the question. Because there has been quite a bit of colloquy, Mr. Uphaus, [fol. 44] I will have it read, so that you will understand it.

Mr. Rownes: May we have our exception noted to the Court's ruling?

The Court: Yes, sir.

(Question read.)

A. There are individuals listed there with whom I had correspondence.

Q. That is in existence and under subpoena?

A. It is in existence, yes.

Q. And which you refuse to produce?

A. Which I refuse to produce.

Q. Without claiming privilege against self-incrimination?

A. That is right.

Mr. Wyman: I ask Your Honor's help in compelling him to produce it.

The Court: "Correspondence" is a pretty inclusive word. Is the correspondence that you want in general or in particular inviting any of these people to speak?

Mr. Wyman: The correspondence called for is in general

during the year 1954, with any person—it is perfectly possible that there could have been no letters requesting them to speak, and a series of letters both before and after and referring to conferences, and the summer conference in that year, or all through the season. It is a question of a dog looking like a cat or a real dog. I think that we should have all of the correspondence and look it over. I think that the committee is entitled to it. It is narrowed to the year 1954; it is narrowed to people, twenty or under in number. It is not like asking . . . to give us all the correspondence with reference to antitrust corporations. He says he has got it, and he knows exactly what is called for.

Mr. Bownes: I pray Your Honor's pardon. Again, for purposes of the record, I object on the grounds stated before, and on the further ground that the correspondence could not possibly have any probative value in this investigation.

Mr. Wyman: Your Honor, I want to report to the legislature. The legislature may want to pass some legislation concerning this organization. I cannot tell the legislature anything about this organization unless I can show a list of the people who were there as speakers and the subjects that were talked about there, to determine whether or not they are subversive. No contention is made that any subversion is involved, but the legislature is entitled to the facts.

Mr. Bownes: Your Honor please, may I point out respectfully that under the subversive activities act the Attorney General has full power to use the state police and the local police to further his investigation, and I respectfully argue that to ask a man in court to violate his conscientiously upheld principles, when he has other means of finding out whether or not certain things have happened [fol. 45] in certain places in the state at his beck and call, makes the questions unnecessary.

Mr. Wyman: Your Honor, this happens all the time. Conscientious principles are understandable, but when ordered to do something by the Court, you can't help it. It is a moral excuse as well as a legal excuse. The state is entitled to the information as to what is going on in New Hampshire, involving persons about whom there is con-

siderable doubt; whether they are sincerely interested in one type of action, or actions which are entirely subversive under our law.

The Court: Brother Wyman, do you have some questions relative to another year regarding correspondence?

Mr. Wyman: Yes, Your Honor. With correspondence?

The Court: Is there another year's correspondence which you wish to ask questions about?

Mr. Wyman: I do, sir. There is a petition filed for the year 1955—for this year. That involves a subpoena which is limited to a few categories,—less than the subpoena for 1954, because in the year, 1954 Mr. Uphaus testified under oath that he didn't have any flyers, booklets, pamphlets, or other documents passing between World Fellowship, Inc. or himself and members of the Communist Party, or between World Fellowship, Inc. or himself and any individual or organization in which the doctrine of the overthrow of government by force and violence is involved.

In the 1955 subpoena, as far as correspondence is concerned, we asked for three things, all of which the witness has declined for reasons stated by the witness. (1) Correspondence with or concerning persons who presented speeches, addresses, panel discussions, or topics at World Fellowship, Inc. during the 1955 season. (2) Any flyers, correspondence, booklets, pamphlets or other documents passing between World Fellowship, Inc. and/or Mr. Uphaus and members of the Communist Party or any subdivision of the Communist Party, U.S.A., from January 1, to date. And lastly, any flyers, correspondence, booklets, pamphlets or other documents passing between World Fellowship, Inc. or Mr. Uphaus and any individual or organization in which the doctrine of the necessity for the overthrow of the government of the United States or this state is stated, from January 1, 1955 to date. I suppose these are all in the nature of correspondence, but limiting it strictly to correspondence, the request is identical, except that as yet I have not asked who the speakers were in the 1955 season.

Mr. France: It is quite apparent from what the Attorney General says that he has no information. . . . In the case decided by Judge Bailey Aldrich in a similar case in Massa-

[fol. 46] chusetts, the Judge said that the committee had no right to engage in a general fishing expedition on the chance that something might turn up—an undertaking which uniformly has met with judicial condemnation. A fishing expedition, he added, would seem a proper description of the Government's contention that a question is pertinent if an answer might reveal further sources of information, which, if pursued, might eventually lead to a pertinent inquiry. It is difficult to think where pertinency would not exist under such a definition.

The Court: Before we go much further, may I have the 1955 request, if it is available?

Mr. Wyman: There is the 1955 request, sir.

The Court: Do you have another copy?

Mr. Wyman: No. I do not believe I ~~used~~ it.

Mr. Bownes: Could we request that the 1955 requests or questions be asked of the witness, as the 1954 ones have been asked. There may be some in relation to 1955 that the witness will answer.

The Court: I assume that will be brought out.

Mr. Wyman: I thought that I was limited to the question of correspondence, in answer to your question whether or not I had made the same requests for 1955 and whether there were any answers to be elicited relative to the requests, which, of course, there are.

The Court: Well, there are various facts which may be brought out by correspondence. I went from correspondence as you had defined it for 1954, and moved into 1955. Are we with each other there?

Mr. Wyman: Yes, sir.

The Court: Have you or will you ask Mr. Uphaus as to the correspondence in 1955?

Mr. Wyman: Only in the administrative proceeding, and in the administrative proceeding, which took place on August 31st, 1955, the witness declined to furnish the information for reasons, none of which involved his claim of privilege against self-incrimination.

The Court: So far Dr. Uphaus has declined to furnish to you the correspondence, as you have used the word, for the year 1954. Is that so, Gentlemen?

Mr. Wyman: In this court, yes.

The Court: Yes, in this court. Now, do you wish to ask for that correspondence, as defined for the year 1955?

Mr. Wyman: I do, Your Honor, but I would like to ask the witness first who the speakers were in 1955. We do not have that information.

The Court: That is for the year 1955?

[fol. 47] Mr. Wyman: Yes, Your Honor.

Q. Who were the speakers at World Fellowship, Inc. for the year 1955 within the meaning of the subpoena?

A. I have brought with me our official bulletin, copies of which I have, which tells the story for the summer. I will be pleased to give the Attorney General a copy of that.

Q. I ask the witness, using whatever documents he wishes, to now testify as to who his speakers were in the 1955 season, bearing in mind that I am asking not only for the formal announcements but for each name of every person who led either a panel discussion or group discussion at World Fellowship, Inc. this summer.

A. That I am positively unable to do from memory.

Q. Is there anything here which would help you to give us that information?

A. The official report or bulletin of World Fellowship, copies of which I have.

Q. Will you obtain that and tell us who they were, to the best of your knowledge?

(Witness is handed papers by his counsel.)

Q. All right, Mr. Uphaus, will you tell us who the speakers were at World Fellowship, Inc. in the year 1955?

A. Mary Jane Keeney, Dr. Royal W. France, Helen and Scott Nearing,—

Q. I see you are reading from something?

A. This is our official document.

Q. May I inquire whether Royal W. France, who is in the courtroom and who is referred to as a speaker in (sic) the same Royal W. France, the description of whom appears at page 140 of this report?

A. Yes, the same.

The Court: That is what report?

Mr. Wyman: The report of January 5, 1955 to the legislature.

Mr. Bownes: It is understood that we object to any use of the report at all, on the basis that it is hearsay evidence.

The Court: That objection is overruled.

Mr. Bownes: Note our exception.

Q. Is the Scott Nearing you just mentioned the same Scott Nearing whose name appears on page 147?

A. Yes.

Q. Who ran for governor of New Jersey on the Communist ticket in the year 1928? Did you know that?

A. Does it appear in the record?

Q. I am just asking you if you knew that he was a candidate at one time on the Communist ticket?

A. I did not.

Q. You did not. Can I have who the other names were? You said Mary Jane Keeney?

A. Mary Jane Keeney.

Q. And who is Mary Jane Keeney?

A. She is on the United Nations staff—economic analyst; also on the council of economic advisers in Europe.

Q. Do you know whether or not she is cited as a member of or associated with one or more organizations which have been cited as Communist controlled?

A. I think I recall that she was cited as having had those connections.

[fol. 48] Q. She has been cited a good many times, has she not, Mr. Uphaus?

A. I would not know how many times.

Q. Well, at least more than once?

A. I should say so.

Q. Who is the next one, sir, that appears on the list that you are reading from there?

A. William Hinton.

Q. Now, who is William Hinton, sir?

A. William Hinton is a young man who lives in Vermont, who is a world travelled person, who has been in China and other countries recently.

Q. Isn't he the one who testified fairly recently before the House Committee on Un-American activities or activities?

A. I do not recall whether he did or not.

Q. Did he lecture there this summer, at your request?

A. He spoke.

Q. Do you have any correspondence with him, called for by this subpoena?

A. I have correspondence with him.

Q. What is the next name?

A. The next name, Julian Schuman.

Q. How do you spell that last name?

A. S-e-h-u-m-a-n.

Q. And who is Mr. Schuman?

Mr. Bownes: Your Honor please, while the Attorney General is looking at his notes, it is understood that our objection goes to this whole line of questioning?

The Court: Well, just a minute. What do you mean by "this whole line of questioning"? I thought Dr. Uphaus said he would be perfectly willing to introduce this pamphlet, or read from it.

Mr. Bownes: That is correct, and he is giving the names of the guest speakers. The question I object to is, "Do you know he belongs to such-and-such an organization, or was cited by the Unamerican Activities Committee?" On that ground, we object because we say it has no relevancy, but I understand that Mr. Uphaus will give the names of the speakers.

(No answer.)

Q. Who was the next speaker?

A. Lily Tongson. She is an official person of the Philippine (sic) U. N. Mission in the United States. Marguerite Cartwright, a teacher at Hunter College. Vilko Winterhalter. —

Q. How do you spell that last name?

A. V-i-n-t-e-r-h-a-l-t-e-r.

Q. Were there any others?

A. Marion Davidson, Dr. Harry Cohen, Janet Sharp, Herbert and Betty Haufrecht, Dr. Sidney Moses, Professor Gwynn Daggett.

Q. On Professor Gwynn Daggett, do you remember when he spoke?

A. It was toward the end of the summer. I do not remember the date exactly.

Q. And did you invite him to speak?

A. He happened in that evening, just out of general interest in World Fellowship, and was invited to speak.

Q. There is no correspondence with him during 1955?

A. Oh, yes.

Q. There is correspondence with him?

A. Oh, yes indeed.

Q. And you recognize that that is called for by the subpoena?

A. That is right.

Q. What did he talk about?

[fol. 49] A. He talked about civil liberties in New Hampshire.

Q. Did he speak more than once?

A. Do you mean that day?

Q. At any time.

A. One time. One time.

Q. Do you mean one other time?

A. No, sir. He spoke one time.

Q. Did Professor Daggett attend World Fellowship with anyone else?

A. He came alone that evening, as I recall.

Q. There was no other evening or no other day during the 1955 season that he was there?

A. I believe that my memory is right on that. I don't believe he was.

Q. Are there more names?

A. Anne Winston, Carl Ryan, Thelma Dale, Rev. Joseph Swain, J. Franklin Pineo, Ruth Crawford, Florence Luscomb.

Q. Is that the lady who took the Fifth Amendment when she was questioned in this investigation in New Hampshire?

A. Your Honor, I know that she was investigated but I don't know what amendment she used.

Q. Just to refresh your recollection, when she was questioned on World Fellowship this summer, she refused to answer on the ground that true answers to the questions would tend to incriminate her.

Mr. Bownes: I object.

The Court: Is there a record of that? Is it a matter of record?

Mr. Wyman: Oh, yes.

The Court: Brother Bownes, do you concede that it did happen?

Mr. Bownes: If it is a matter of record, Your Honor, we will withdraw the objection.

Q. I just want to ask you whether or not you knew that, Mr. Uphaus?

A. Well, I knew that she had been called in and questioned. I do not know as I can describe what took place, or what legal recourse she took.

Q. Do you have any idea why, if she did, she would take the Fifth Amendment with respect to the activities at World Fellowship, Inc.?

A. I think that she may have read some of the recent eminent authorities, who show that the Fifth Amendment is one of the bulwarks in this country.

Q. But you do—it could not have been that there was any conspiracy going on at World Fellowship?

A. No, sir. Positively not.

Q. But you do refuse to reveal any of the correspondence with Florence Luscomb?

A. Yes.

Q. Without claiming any privilege of self-incrimination?

A. Yes.

Q. How many times was Miss Luscomb there this summer?

A. Just one afternoon. Possibly she may have stopped just to say "Hello" once or twice, but she spoke only once.

Q. What did she talk about?

A. She talked about her experience in Massachusetts.

Q. With regard to questioning there?

A. With regard to what she considered unconstitutional treatment of her there.

Q. Did she at that time, At World Fellowship, distribute [fol. 50] a number of flyers about that case?

A. I believe she did.

Q. During 1955 were other publications distributed at World Fellowship, Inc.?

A. Oh, I think so. We had an abundance of literature of all kinds.

Q. I just show you here a publication called "Soviet Impressions" by Dr. John A. Kingsbury, Chairman of American Council of American-Soviet Friendship, which

was on the Attorney General's list, and I ask you was this distributed at World Fellowship?

Mr. Bownes: We object to that, Your Honor, as having no probative value.

The Court: Your objection is overruled.

Mr. Bownes: Note our exception.

A. I think copies were on the reading table. No one went through the gesture of distributing them.

Q. I have a pamphlet by Mr. Molotov, published in the year 1955, called International Situation and Soviet Foreign Policy. Was this distributed at World Fellowship, Inc. this summer?

Mr. Bownes: We object.

The Court: Objection overruled.

Mr. Bownes: Exception.

A. It probably was on our reading table along with the United States News, World Report, and New York Times.

Q. I am not criticising any of these publications. I am simply asking you whether or not they were distributed at World Fellowship. I now show you another pamphlet called, "We Proudly Present"—being the story, as it appears on its face, of American-Soviet friendship, 1943-1953, and starting out, "Back to Stalingrad": Was that available at World Fellowship this summer?

A. There were copies of it there.

Mr. Bownes: Your Honor please, I thought that the 1955 subpoena went to these documents, but I find that the Attorney General has them; and any part of the subpoena for 1955 calling for flyers and booklets, we move, is not material or relevant, and has no probative value because the Attorney General is now in possession of the documents.

Mr. Wyman: If this man destroyed any documents after the subpoena, he would be in contempt, whether I have them or not, if they were called for by the subpoena. And I would like to call Your Honor's attention to the fact that at the hearing of September 27th, 1954 the witness said he didn't have any such publications for that year, and we haven't yet got to the question whether or not he had any such publication for this year.

The Court: The question may stand.

Mr. Bownes: Note our exception.

[fol. 51] Q. I show you "Soviet Russia Today, 1947", by Harry F. Wood. I ask if this was at World Fellowship and circulated there?

A. I do not recall that one, sir.

Q. Are you testifying that it was not at—

A. I am not testifying that it was not there. We had an abundance of literature. I said I did not recall it.

Q. May I inquire who Harry F. Wood is?

A. He is an eminent economist, sir.

Q. And cited as affiliated with and connected with many organizations which are Communist controlled?

A. Oh, yes, he has been cited.

Q. I show you an index of the committee—the Committee on Un-American Activities of the United States Congress. Does the name of Harry F. Wood appear at page 731 with over one hundred citations? Is that the same Harry F. Wood?

A. Yes.

Mr. France: May I interpose another objection, Your Honor? This is very far afield. Here is a pamphlet which the Attorney General produces and which the witness says he does not recall being there, alleged to have been written by Harry F. Wood, with no connection to this proceeding at all except that the pamphlet is produced in an attempt—we are now going into a far flung expedition relative to Mr. Wood, who is not before this Court. I think there should be some limit as to how far this cross examination should go.

Mr. Wyman: I am now examining the witness relative to the year 1955. I do not understand that the witness says this was not there. I am not making an offer of proof. A legislative committee is not required to show the witness proof before asking questions. I am anxious to continue only to the point where Your Honor is satisfied that on the record concerning this own witness' testimony, actions at World Fellowship are relevant and should be subject to investigation relative to subversive activities.

Mr. Bownes: We object. We feel that this is not a legislative inquiry but a judicial procedure, and that the regu-

lar rules of judicial procedures, with the safeguards as to individuals' rights and methods of proof prevail. We want an exception if the Court is going to, somewhere along the line, rule that this is a legislative inquiry. That is where we and the Attorney General part company in absolutely diverse or opposite directions.

The Court: All right. I will allow the question to stand:

Q. Was Rev. Richard Morford there last season?

A. That is right.

Q. And is that the same Rev. Richard Morford who is described at page 146?

A. Yes.

Q. He is the National Director of the Council on American-Soviet Friendship?

A. That is right.

Q. And is that organization cited on the National Attorney General's list?

A. So I understand.

Q. Do you have any other names of persons who spoke or lectured at World Fellowship, Inc. this last summer?

[fol. 52] A. Yes. Rhoda deSilva, John Pratt Whitman, Rev. Wayne White. That is the record.

Q. Is that all?

A. That is all in this record.

Q. Do you remember any others who were there, Mr. Uphaus?

A. Well, . . .

Q. Was Dirk Struik there this summer?

A. No, he was not.

Q. Were there any other speakers there this summer?

A. There was another pastor there. Father—I have forgotten his name.

Q. Did he speak there?

A. Yes. Father Foss. He spoke at a vesper service one Sunday evening.

Q. What did he talk about?

A. He gave a message from the prophet Isaiah on peace and good will. He was there for a month, and read at breakfast. He was a guest there.

Q. Was William Stern there?

A. Yes.

Q. Was he a guard of Paul Robeson at the Peekskill . . .

A. I do not know that, sir.

Q. Are you sure that you do not know?

A. I am sure that I do not know.

Q. Was Rev. Wayne White there this summer?

A. Yes.

Q. And is that the same Rev. Wayne White who is described at page 151 of the report?

A. It is the same man.

Mr. Wyman: Now, Your Honor, in so far as the subpoena duces tecum are concerned, I would like to submit respectfully, as a matter of law, that the record in existence at the present time in this court amply indicates a sufficient basis—a sufficiently reasonable basis for asking Mr. Uphaus to produce this information, to a fact-finding committee charged with the responsibility of determining whether or not any recommendations for legislation in regard to World Fellowship are necessary. I don't know that they are, but I do know and I do not believe that it is competent or proper to maintain that anyone can come into the State of New Hampshire, run an organization, have it attended by individuals with records such as this witness has identified here in court today, and then refuse to tell the legislature what goes on there.

The Court: More specifically, are you referring to number three?

Mr. Wyman: Of the 1955 subpoena, yes, Your Honor.

Mr. Bownes: Your Honor please, we don't have a copy of that. I am not sure where we stand as far as the question asked is concerned. Of course, Mr. Uphaus has answered a lot of questions, and the Attorney General has asked that he produce certain information. I don't know specifically what he is referring to, and for what year.

The Court: I asked the Attorney General if he was referring to item three of the 1955 subpoena. I shall read number three: "All correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship, Inc., during the 1955 season."

Mr. Bownes: I understand that the Attorney General is [fol. 53] now asking for that information. To that we object on the same grounds we have made on our prior objections.

The Court: Now, what is the witness' answer to that request?

Witness: Number three?

The Court: Yes, sir; the one I have just read.

Witness: The answer would have to be, "No".

Mr. Wyman: Again for the purpose of the record, I ask Your Honor to order the witness to produce this information.

The Court: At this time, on that request on that question, for the years 1954 and 1955, I am going to reserve judgment. I am going to make a further suggestion. I am going to ask the stenographer to make copies of the 1955 subpoena, so that we all can have it. I think that will make it easier. While she is doing that, we can all take a short recess.

(Recess 3:15 to 3:30 p.m.)

The Court: Now, why don't you take your subpoena, and I will take a copy, Mr. Wyman.

Mr. Wyman: Thank you.

Q. Mr. Uphaus, I show you here a copy of the "Monthly Review", containing a section on the Daggett-Sweezy case?

A. Yes.

Q. Do you have the monthly review at World Fellowship?

A. We do.

Q. I ask you if this particular issue of August, 1954, was at World Fellowship, Inc.?

A. I think we had a number of copies of it, yes.

Q. If after the conclusion of the article on the Daggett-Sweezy case there appears at page 150, in italics "The Right of Revolution", is that particular excerpt from the Constitution of New Hampshire? "The Right of Revolution"?

A. I don't recall having read that.

Q. But it does appear there, sir?

A. Yes.

Q. Now, you have a sign outside of World Fellowship, do you not, Mr. Uphaus, on the highway?

A. That is right.

Q. And what does that sign say?

A. Well, I think—I don't know whether I can quote it exactly, but it says, "All Races, colors, countries, convictions, welcome." Or something like that. Four to seven dollars a day.

Q. It is very clear from that sign that it is a public place at World Fellowship?

A. It is a center for educational and religious purposes.

Q. I don't mean like a hotel, but if anybody going by on the road, whether he is driving a Cadillac or a Model-T, he is welcome to come in to World Fellowship?

A. Yes.

Q. Does it make any difference to you whether he believes in Communism?

A. He is never asked if he is a Republican or a Communist; it depends on his conduct while he is there.

Q. The subpoena for 1955 asks for the guest registry at World Fellowship for the 1955 season. Before I ask the question to which my brother will object, I would like to [fol. 54] ask you in terms of numbers how many were at World Fellowship this summer?

A. Something over three hundred.

Q. Will you produce the registration certificates for guests at World Fellowship during the 1955 season?

Mr. Bownes: We object on the ground that there is no basis—no showing that the question asked is pertinent or relevant for the Attorney General's investigation as to the UnAmerican or subversive activities. And further, we wish to point out that the information asked for is clearly hearsay and normally not admissible in a judicial proceeding, and affirmative testimony of Willard Uphaus, under oath, is that there was no advocacy of overthrow of government by force and violence, no subversive activities, and therefore it cannot be found to be pertinent and relevant to the inquiry. Third, it is merely a fishing expedition, and as such cannot be allowed to stand. Fourth, the question violates the rights of Dr. Uphaus under the first, fourth and fourteenth Federal and parts four and fourteen of the State Constitution. Further, there is no showing that Dr. Uphaus, as an employee of World Fellowship, Inc. has a right to produce the records asked for.

(No answer)

Q. Without arguing the point, I will ask you in that connection, do you have a list of the 1955 registrations?

A. Yes, I do.

Q. How is it kept on three by five cards?

A. It is on three by five cards, yes.

Q. Where is it physically located?

A. In New Haven, Connecticut.

Q. Did you know before you came here today that it was requested by this subpoena?

A. Yes, sir.

Q. Did you bring it with you?

A. No, sir.

Q. I ask you to produce it.

A. I cannot in good conscience do it, sir.

Mr. Wyman: I ask Your Honor to order him to produce it.

The Court: Are you the executive director of World Fellowship, Inc.?

Witness: Yes, Your Honor.

The Court: I think that the question is a proper one—or the request. Your objection is overruled.

Mr. Bownes: Note our exception.

The Court: Do you decline to comply with the request, sir? Do you decline to produce the information which Mr. Wyman has asked for?

Witness: Your Honor, yes.

Q. Mr. Uphaus, I have to finish the 1955 subpoena for purposes of the record. I asked you to produce records or data identifying employees of World Fellowship, whether paid or unpaid employees, in the 1955 season.

Mr. Wyman: I understand Your Honor has ruled with [fol. 55] respect to the 1954 season that those will not be compelled?

The Court: That is right.

Mr. Wyman: There is a distinction, Your Honor please, between the 1954 and the 1955 item. Item number two—well, I am in error. I am in error there. The 1954 subpoena also called for identification of the employees, whether paid or unpaid. I just don't want to miss anybody because he might not be in the category of a guest, on the theory

that he was an employee and therefore would not have to be in one category—I don't want to miss an employee on the theory that he was not paid and therefore was not an employee within the commonly accepted meaning of the word; therefore the subpoena calls for the identification of employees, whether actually paid a salary, or whether they served without compensation in the 1955 season.

Mr. Bownes: We object to the question on the grounds stated before.

The Court: Do you have that request in your mind?

Witness: I would like to have it restated, if you please.

Q. The request is for records or data identifying employees of World Fellowship, whether paid or unpaid employees, for the 1955 season—that is, this year.

A. Yes, I have it in mind.

Q. I suppose I should ask at this point how many did you have in this season?

A. I think six, as I recall.

Q. Were any of the six unpaid employees?

A. We had no unpaid employees this year, as I recall.

Q. So that this all refers then, if it is of any compulsive force at all, to paid employees?

A. Paid employees.

Q. Of those six paid employees, how many of them came from this state?

A. All but one, I believe.

Q. You nevertheless decline to furnish me their names?

A. I decline.

The Court: I will make the same ruling on that, and will uphold Dr. Uphaus' objection.

Mr. Wyman: Exception, please.

Q. There are two more categories in the 1955 subpoena. In number four, I asked you to produce any flyers, correspondence, booklets, pamphlets or other documents passing between World Fellowship, Inc. of yourself and members of the Communist Party or any subdivision of the Communist Party, U.S.A., from January 1, 1955 to date.

Mr. Bownes: To that question, we object, Your Honor, on the grounds before stated.

The Court: Would you like to see number four from which he is reading?

(Copy of subpoena handed to the witness by the Court.)

Witness: Your Honor, there has been no correspondence; [fol. 56] possibly we received some when on the mailing list.

Q. Do you have correspondence which you received from the Communist mailing list?

A. Yes.

Q. Where is it?

A. It is in New Haven.

Q. You knew that it was called for by this subpoena?

A. Yes, sir.

Q. But you did not bring it?

A. No, sir.

Q. I ask you to produce it. In so far as there is any material in existence covered by this section of the subpoena, with Communists or Communist organizations, I ask you to produce it.

Mr. France: Well, is there any such correspondence with the Communist Party?

Witness: There is no correspondence with the Communist Party or any section of the Communist party, as I recall. One unit of the Communist party—no, this was the year preceding 1955. I recall one pamphlet which came from a unit of the Communist Party. I will be willing to testify that no correspondence came from any unit of the Communist Party in 1955.

Q. Didn't you testify that you were on the mailing list of the Communist Party?

A. I did not. I don't believe I did. If I received correspondence, I may have been, but I don't believe I have testified to that effect. I have had no correspondence with the Communist Party or units of the Communist Party.

Q. Did you receive from the Communist Party or any subdivisions of it any of the materials described in this subsection of it—flyers, booklets, pamphlets, or other documents, from January 1, 1955 to August 31st?

A. I did not. I testified in an earlier session that I had

received one document, supposing I was on the mailing list of that unit of the party.

Q. Have you corresponded with any Communist or former Communist between January 1, 1955 and August 31, 1955?

Mr. France: Your Honor please, nobody in the world could answer any question like that. I object to the question on the ground it is too vague and all-inclusive. Your Honor may have corresponded with a Communist or Communists in the past year, or anyone else in this room including the Attorney General may have corresponded with a Communist. The question is improper in its present form.

The Court: The question presupposes knowledge, doesn't it?

Mr. France: That is not what he asked, Your Honor. He asked if he corresponded with any Communist. How can he possibly know? If he were asked the question if he had corresponded with any persons whom he knew to be Communists, the objection would be different.

Mr. Wyman: He doesn't know anyone to be a Communist. He has testified to that. He has said five times, if he has [fol. 57] once, today that he never asks them what their political affiliations are. The legislature of the State of New Hampshire, in its preamble to the 1951 Act, has ruled that the Communist Party is not a matter of political affiliation, as a matter of law.

Mr. France: He can't tell whether any of the people or all the people he had correspondence with during the year 1955 were or may have been Communists.

Mr. Wyman: I will withdraw the question and ask it in another way.

The Court: All right.

Q. Again this question is directed to 1955, between January 1st and August 31st, Mr. Uphaus. I ask you, have you had any correspondence—and this time I am talking about between yourself and any persons generally reported and known by you to be reported to be members of the Communist Party?

Mr. France: Again, Your Honor, this is asking him something on the basis of hearsay—as to whether he had corre-

spondence with persons reported . . . reported by whom, where, how, and with what knowledge or proof?

The Court: I will let him answer, and we will see what his answer is.

Witness: May I have the question again?

(Question read)

A. I suspect that I have had correspondence with persons who have been reported or alleged to have been members of the Communist Party.

Q. Do you have that correspondence in New Haven?

A. Yes, sir.

Q. Will you produce it?

A. No, sir.

Q. Now getting away from yourself, and speaking now of you in your capacity as executive director of World Fellowship, Inc., has World Fellowship, Inc., through you as executive director, had any correspondence with persons either known by you to be Communists, or generally reputed or reported to be Communists, in this period—from January 1st to August 31st, 1955?

A. There has been no official—

Mr. France: The same objection, Your Honor.

A. There has been no official correspondence apart from my personal correspondence; therefore, when I answered the first question, I answered it.

Q. Referring to Scott Nearing—have you had any correspondence with Scott Nearing this year?

A. Yes, sir.

Q. Isn't he a member of the Communist Party?

A. I can't say. I don't think he is, but I can't say.

Q. Wasn't he at one time a member of the Communist Party?

A. It was alleged. I never knew him as such.

Q. You knew that he was reported as being a member of the Communist Party?

A. Yes, he was reported or alleged to have been a [fol. 58] member, long ago.

Mr. Bownes: Your Honor please, I would like to point that the Attorney General is not asking for what number

four called for in the subpoena. Number four says "Members of the Communist Party or any subdivision of the Communist Party".

Mr. Wyman: I thought I was, Your Honor.

The Court: Is it your contention that the Attorney General is restricted in his questions this afternoon to those strictly contained in the subpoena?

Mr. Bownes: Yes, Your Honor.

Mr. Wyman: Oh, Your Honor, I can ask the witness any question. This is a continuation of the legislative investigation.

Mr. Bownes: Unless he can show that the matters requested are pertinent or relevant. Dr. Uphaus has been cited for contempt because he has not answered certain questions.

Mr. Wyman: Your Honor, Dr. Uphaus has not been cited for contempt yet.

The Court: I was not aware of it.

Mr. Wyman: I have filed no petition, and I have no power to cite him for contempt. I am asking Your Honor to ask these questions of him. If he refuses, then he is in contempt. In the petitions for 1954 and 1955, the prayers ask that the same questions be propounded to the witness before the Court and that in the event the witness declines to answer he be adjudged in contempt, and if he elects to proceed to answer the questions, then we continue in private session. In the 1955 petition the same prayer is made. I don't know what the statute means when it says it shall be treated as if started in court, unless it means that the witness is not in court. As a matter of practicality, I have no intention of going into matters other than what is called for by the subpoena.

Mr. France: To show the difficulty of the whole thing, I know that Dr. Scott Nearing made an application for a passport, and in the application for the passport he stated that he was not a Communist and the passport was issued by the State Department. We are not able to try all these people about whom the Attorney General brings in all these vague allegations and questions. It gets us too far afield. It seems to me proposition is perfectly clear. The question that is before this Court is, is this witness required

to produce his correspondence with the speakers who spoke at the World Fellowship, and when we get into all of these collateral matters and questions, we would—in order to understand what is the bearing of the questions—have to have Scott Nearing and Dr. Harry F. Wood, and a lot of other people here to answer all the insinuations of the Attorney General.

[fol. 59] Mr. Wyman: There are no insinuations; the record is clear.

The Court: Certain questions are germane. That is, with reference to the production or non-production of certain information, some questions have been proper and some are outside the scope of proper inquiry. Now, what is the question right now?

(Question and answer read)

Mr. Bownes: I thought there was a question pending.

Q. I now ask you to produce any documents which you have in your possession, in compliance with section four of the subpoena?

A. I have none to produce.

The Court: Just a moment. I want to make sure that we are all together here. May I have one of those copies? I would like to have the witness have before him section number four.

Q. When you say, Mr. Uphaus, that you have none to produce, I would like at this point to simply say that the words, "passing between you and members of the Communist Party or any subdivision, or between World Fellowship, Inc. or yourself and members of the Communist Party, or any subdivision of the Communist Party" does not necessarily mean mailed through the United States mail. Didn't anybody bring any Communist literature to World Fellowship, Inc. this summer?

A. I can't testify that anyone did, really.

Q. Didn't you see any physically located on the premises of the World Fellowship, Inc. this summer?

A. Official literature?

Q. Official literature of the Communist Party, or printed by or under the auspices of the Communist Party, U.S.A.?

A. If it was brought, it was brought without my knowledge.

Q. You certainly saw a considerable amount of literature which was printed under the auspices of various corporations in New York City?

A. That doesn't mean that it was under the auspices of the Communist Party.

Q. Would you say that publications of the National Council of American-Soviet Friendship have nothing to do with the Communist Party?

A. Nothing official whatever.

Q. What about the Daily Worker?

A. It is an official organ of the Communist Party.

Q. Were there any copies of the Daily Worker at World Fellowship this summer?

A. It is possible there may have been.

Q. They were called for by the subpoena?

A. They were.

Q. Where are they?

A. They are probably in the waste basket or in the fireplace at the camp of World Fellowship.

Mr. Bownes: Maybe I can shorten this up, if I am permitted to ask the witness a question.

The Court: Your turn will come.

Q. I show you this—March of Labor. Was that at World Fellowship this summer?

A. Yes, we had copies of that.

Q. Who is this? Is it Mr. . . .

A. It is a very poor likeness.

[fol. 60] Q. This March of Labor is published in New York?

A. Yes.

Q. Do you know if this is a publication of or under the auspices of the Communist Party?

A. To my knowledge, it is not. It is a progressive labor organization.

Q. Do you know if any Communists are active in it?

A. It is possible, but I do not happen to know them.

Mr. Wynnan: Your Honor please. I request an order directing the witness to produce such documents as he has

within the meaning of the subpoena, or to reply that he has none.

The Court: Dr. Uphaus, with respect to number four, as now changed by brackets around the third word, correspondence,—will you answer the Attorney General's question on that?

Witness: Your Honor, specifically with respect to correspondence?

The Court: No. For the moment, deleting the third word, will you reply to the Attorney General's question?

Witness: I can reply that I have brought nothing under number four.

Q. I will ask just one more question on this point. I show you here a publication by John W. Powell, "Formosa, Fact and Fiction," with a notation that copies may be ordered from the writer. Who is John W. Powell?

Q. He is a person who has been in the Orient.

Q. Was this available at World Fellowship?

A. We had it.

Q. Did he testify before the Jenner Internal Security Commission this past year?

A. I think he did.

Q. Who brought this to World Fellowship?

Mr. Bownes: We object to the question with respect to Mr. Powell.

The Court: Well, the immediate question is, "Who brought this pamphlet to the premises?" I may have misunderstood it.

Mr. France: Do you know?

Witness: I do not know who brought it.

Q. You don't know. You don't know whether Mr. Hinton brought it?

A. Not positively. He could have. He could have.

Q. You know Mr. Hinton?

A. Yes.

Q. He co-edits the Monthly Review with Mr. Huberman?

A. Yes.

Q. Does John W. Powell print in China the China Monthly review?

A. Yes. It is now defunct. He used to.

Q. Is John W. Powell a Communist?

A. I do not know.

Q. Is Mr. Hinton a Communist?

A. I do not know. I would guess he is not, but I do not know.

Q. Do all these publications just get to World Fellowship, Inc. by accident?

A. Not necessarily. It is our purpose at World Fellowship to have a wide array of information for people who come there, all the way from these publications—it is the purpose of World Fellowship to acquaint people with a cross section of current political opinion. To do that you have to have literature published by organizations and persons who possibly have been cited. At the same time we have the most conservative journals, which further the most conservative points of view. Our people are intelligent and they like all types of points of view to read.

Q. If you consider this circle marked Daily Worker, which you say is an official organ of the Communist Party?

A. Yes.

Q. And the other end marks some right wing publications?

A. Yes.

Q. Does the periphery of this circle—the line of permissible publications at World Fellowship, Inc. permit Communist publications?

A. We have no subscription to the Daily Worker. We have no subscription to Communist literature at World Fellowship.

Q. Can you answer this question—why, of the total publications at World Fellowship, Inc., why are ninety percent of your publications of this type?

A. I deny the allegation.

Q. I will withdraw the question and statement, and I ask the witness to produce the literature.

A. At World Fellowship we have the New York Times, the United States News and World Report, the Methodist Advocate, the . . . Messenger, the United States News and World Report, Newsweek, National Guardian, and that kind of a spread. I would be foolish if I tried to give a

percentage balance. It is a broad diet of religious and intellectual opinion and discussion.

Mr. Wyman: If Your Honor please, I do not feel that the State is obliged to make an offer of proof, and therefore I am not making one. I ask that the Court direct the witness to furnish such documents as he has, in compliance with paragraph four, or to respond in the negative under oath.

The Court: Is there an objection?

Mr. Bownes: Yes, Your Honor. I don't believe that the witness has been asked if he has any flyers, booklets, pamphlets or other documents passing between himself or World Fellowship and the Communist Party or any subdivision of the Communist Party from January 1st to date. Until he has been asked that question, I don't see how he can be asked to comply with the request made by the Attorney General.

Mr. Wyman: I would like to have the record indicate that it has been asked, if it is permissible.

The Court: I am not sure that it has been.

Mr. Wyman: I am sure that it has been, Your Honor.

The Court: That is the question, Dr. Uphaus.

Witness: The question is whether literature has been passed between us, or whether I am to bring it? What is the question, please?

Q. Do you have any, anywhere?

A. It is possible that I have.

Q. Will you produce it?

A. No.

The Court: Now just a moment before we leave that. [fol. 62] Did the question delete the word "correspondence"?

Mr. Wyman: Yes, it was intended to.

The Court: And you so understood it?

Witness: Yes.

Q. Did you show a movie at the World Fellowship entitled, "Children and Young People in the Soviet World"?

A. Yes.

Q. What was it about?

A. It was about vacation life of young people in the Soviet Union.

Q. Who brought that film to World Fellowship?

A. It was sent to us by mail, by the National Committee on Soviet-American Friendship.

Q. Isn't that cited as a Communist front?

A. It is cited. I might testify that there was not one scintilla of politics in that two-hour film.

Q. Politics?

A. It was the play life of the children of the Soviet Union; their summer vacation. There was nothing about politics.

Q. Where has there been anything about politics in the questions asked you here?

A. It has been hovering all around.

Q. Just to keep it clear, do you maintain that here in New Hampshire membership in the Communist Party, or the advocacy of either Communism or its program, is a matter of politics?

Mr. France: I object. This is going far afield. What he maintains. The question before the Court is whether he should or should not produce certain documents, and it is not clear to me from any of his answers that he has any such things that have passed between him and the Communist Party.

Mr. Wyman: Your Honor please, the witness testified, I believe, in answer to my question about documents that possibly he might have them, but then he said he refused to produce them.

The Court: The matter seems sufficiently remote, and I think because we have had a good deal which is remote that I will not add to it. So I will sustain Mr. France's objection.

Mr. Wyman: That is to this particular question?

The Court: Yes. I am trying to take them one at a time.

Mr. Wyman: Note our exception.

Q. This morning, at the close of the proceedings I asked you whether or not you have ever toasted the revolution, and—

A. Yes, you asked me.

Q. And you answered, "Of course not". Have you ever

in the midst of the combined World Fellowship group, this last summer, made the statement to the organized group, "God bless the revolution."

A. It was in a grace, said at a meal.

Q. What were you talking about?

A. We were not talking about anything. We simply had a prayer before we began to eat.

Q. And what revolution were you talking about?

A. Any revolution; possibly,—possibly India, possibly America. Any place where hungry people are trying to get enough to eat. It was a prayer. There was no reference to violence at all. It didn't imply violence.

Q. How many times did you propose such a blessing during the summer?

A. That is difficult—twice, possibly. We had many prayers, many blessings, from the prayer books—Protestant and Jewish.

Q. I am only asking you the question, Mr. Uphaus. At one time when you made what you call a blessing—"God bless the Revolution", did not some person say to you, "The attorney General would like to hear about this." Isn't that so?

A. I couldn't swear that anyone said that. I think there was a little laughter, possibly,—knowing about the investigation.

Q. I am sure of it, but didn't someone, to the best of your recollection, say that to you?

A. I couldn't swear that that is so. There was some relation or reference, but I couldn't swear to that.

Mr. France: Your Honor, I object and move that it be stricken. The word "revolution" has many implications. The New Deal was referred to as a revolution in American political life. There is nothing here which says this was revolution by force and violence, as contained in this statement. I object to the questions, and ask that the testimony so far given be stricken.

The Court: I don't think that your objection was made in a timely fashion, sir. I will not strike it.

Q. It couldn't be, Mr. Uphaus, that Mr. Weller's basic philosophy prior to the time you were employed by World

Fellowship as executive director was the type of revolution you referred to?

Mr. Bownes: I object. The question is not pertinent. Prior to the time he was connected with Mr. Weller?

Mr. Wyman: Your Honor please, the poem and the philosophy of Mr. Weller—and its encouragement—is printed in the report to the General Court in this case. I am merely asking the witness. The witness only has to say "no" if his answer is "no".

The Court: Brother Wyman, it might be argued that this proceeding is in lieu of one in your office, or a continuation of it possibly, but I still think that the primary purpose of our being here is upon the question of the production of certain information, so I will sustain that objection.

Mr. Wyman: I will withdraw the question.

Q. Will you produce the books and documents, if you have any, requested by section five of the subpoena?

A. I have no—I have no material that comes under that.

Q. Your answer is that you have none?

A. I have none. It says specifically there something about the necessity for the overthrow of the government of the United States or this state. I have no material like that.

Q. Do you state that there was none such at or in your possession—at World Fellowship or in your possession at [fol. 64] the time you received the subpoena?

A. If you will interpret what you mean by "overthrow", I will give you an answer.

Mr. Wyman: I believe, Your Honor, that the subpoena is clear on its face. Now, I am perfectly willing at this point—and I merely make it as a statement and will not make it a question—to ask this witness whether or not this witness advocates a change in the form of government in this country—whether he advocates a change in form of government by force and violence, and then go into the question as to over all representation which exists under our statute, but I think that section five of the subpoena is sufficiently clear and that the transcript of the record in this case is sufficiently clear to raise a substantial question as to what went on at World Fellowship, Inc.

The Court: What about the existence of the material asked for in number five, Doctor?

Witness: I presume, Your Honor, there is material in existence which teaches the doctrine of the necessity of overthrow of government.

The Court: The question has to do with the existence of it in your possession.

Witness: I would assume that anyone who has a broad library relative to such movements—you could probably find it in the public library here. Any intelligent person includes in his library materials of that kind.

The Court: Will you read section five? I am not speaking of library material. This is materials passing between World Fellowship, Inc. or yourself and any individual or organization—

Witness: There has been no material passed between me and persons or organizations which has to do with the overthrow of government.

The Court: Government of the United States?

Witness: Of the United States or of New Hampshire.

The Court: From January 1st to date?

Witness: That is right, Your Honor. That is right.

The Court: I am excluding here for the moment, and for the purpose of my question, the word "correspondence".

Witness: With the word "correspondence" excluded, I have no material—no material has passed between me and organizations publishing literature designed to overthrow the state or the United States.

The Court: That is as much of an answer as I can expect, I assume, and I take it as an answer, "No".

Q. I assume you have none of it?

A. Well, it is difficult—possibly it has been in my library for ten or fifteen years, as a book that remains or that [fol. 65] someone wrote fifteen years ago.

Q. No. I mean do you have any books, pamphlets or flyers which have passed between World Fellowship, Inc. or yourself, and any member of an organization which teaches the doctrine of the necessity of overthrow of the government of the United States or the State of New Hampshire?

A. No.

Q. When you returned from your visit to Warsaw in 1950, did you make certain addresses on American-Soviet friendship?

A. I think I did.

Q. And at that time I ask you whether or not you yourself said in part, and I quote, "Have we gone the limit in bringing to the more intelligent American the remembrance that our history in America began with a revolution and the right of revolution? . . . (Statement read by Attorney General, concluding with) "My hope and yours must ultimately rest with the people. This faith in the people must ultimately be retained." Do you recall making that statement, Mr. Uphaus?

A. I do not remember it, but I think it would stand. I wouldn't rule it out. It is very likely that I did. I know I spoke a number of times after I returned.

Q. And "We can try to bring greater friendship between the United States of America and the . . .

Mr. Bownes: I object, Your Honor. I do not believe that this has anything to do with the inquiry. We could go on here for hours.

The Court: I didn't think that your client would object.

Mr. Bownes: Perhaps I am more conscious of the clock than is my client, Your Honor.

Q. In the book, "World Fellowship of Faith", is there an article by William Montgomery Brown?

A. Yes.

Q. And does the following appear at page 176? "If any government stands in the way that government must be overthrown." And after an article on the support of Communism, roughly, "If any people stand in the way, that people must be destroyed; . . . we must banish God from the skies and capitalists from the earth." Is that in the book, "World Fellowship of Faith"?

A. That is in the book, but I do not subscribe to everything in that.

Q. Just how much religious teaching actually took place at World Fellowship in the lectures which have been referred to by you?

A. We had frequent Sunday evening vesper services.

Q. How much religious teaching was there by the persons who lectured there? Was there any at all?

A. Yes, there was.

Q. Will you give me the names of any persons who lectured on religion?

A. Rev. Wayne White, Father Foss, Rev. Joseph Swain.

Q. Were there any others?

A. Professor Louise Pettibone Smith.

Q. And Louise Pettibone Smith has a record, widely known, as being affiliated with the Communist Party? [fol. 66] A. She is a distinguished Biblical scholar.

Mr. France: Your Honor please, the Attorney General keeps testifying here himself as to what is in the record about these various people who we cannot bring here to answer his insinuations. I again object to this.

Mr. Wyman: I have read nothing here Your Honor but what is in the transcript and before Your Honor. I ask the witness to furnish the material in the two categories remaining; the correspondence, the guest list, and the names.

The Court: Do counsel for Dr. Uphaus wish to ask him any questions?

Cross examination.

By Mr. France:

Q. I would like to ask you where the little quotation about "God bless the revolution" came from, if you know, and what the full quotation is.

A. As I recall, it went like this—and I think it came from India. It went like this, "We have food; others have none; God bless the revolution."

Q. Do you have any flyers, correspondence, booklets, pamphlets or other documents passing between World Fellowship, Inc. or yourself and members of the Communist Party or any subdivision of the Communist Party U.S.A., from January 1, 1955 to date?

A. I do not.

Mr. France: I think we are through, Your Honor.

The Court: Did you just read from number four of the 1955 subpoena?

Mr. France: Yes, I just read from number four of the 1955 subpoena. I should have omitted the word "correspondence". He says he hasn't any. I should have omitted it. I think I read the entire number four, and he says he has none.

The Court: Are there any further questions?—I would like to ask the witness this question, I thought in response to a question put by Mr. Wyman with respect to number four, you said you refused to supply such material, excluding correspondence. It is my recollection of your testimony that you said you were not going to supply that information or that material.

Witness: I must have misunderstood, because I testified there isn't any to supply.

The Court: If there isn't any to supply, you can't supply it; if you have and refuse to, that is a different matter.

Witness: Well, Your Honor, the correct answer is I have none to bring—none to supply.

The Court: With respect, Dr. Uphaus, to the request to supply the guest registry for World Fellowship, Inc. for 1954 and 1955, is there anything about that request which [fol. 67] is obscure in your mind, or which you do not understand?

Witness: I think everything is clear.

The Court: All right. Now with respect to the request concerning correspondence—that has been pretty well discussed here—over the two years, 1954 and 1955, I am reserving judgment on that. However, I am directing you, sir, to comply with the request concerning the guest registry for World Fellowship, Inc. for the 1954 and 1955 seasons. To my comment and statement, what do you say?

Witness: I shall have to decline, Your Honor.

The Court: All right. You may step down.

Mr. Bownes: May it please the Court?

The Court: Yes.

Mr. Bownes: Because there is some difference of opinion between the Attorney General and ourselves as to what kind of proceeding this is, I would like to make this motion, if I understand that the questioning, for the purposes of the record, has been concluded.

The Court: I didn't hear you, after the "if".

Mr. Bowmes: I say because there is some difference between the Attorney General and ourselves as to the type of proceeding this is, I would like to make a motion for the record, if the questioning of Dr. Uphaus has been finished. We are finished, but I don't know whether or not the Court wishes to ask Mr. Uphaus any further questions.

The Court: I don't.

MOTION TO DISMISS THE PETITION

Mr. Bowmes: We move that the petition of the Attorney General, under which these proceedings have been instituted, asking that Dr. Uphaus be found in contempt for refusing to produce a list of guests at World Fellowship, Inc. for the years 1954 and 1955, and for refusing to produce his correspondence with guest speakers at World Fellowship, Inc. for the years 1954 and 1955, be dismissed on the following grounds: (1) There is no evidence at all to form any kind of basis for the—I have written this out and will give it to the stenographer—it is the same from now on as I have made before. (1) That there is no evidence at all to form any kind of basis for a showing that the questions are pertinent and relevant to the Attorney General's investigation under the so-called Subversive Activities Act. The only evidence given to support the questions asked was strictly hearsay and therefore clearly not admissible in a judicial proceeding; and the only affirmative evidence given at all was that given by Dr. Uphaus, who stated under oath that there was no advocacy of overthrow of government, by force and violence at World Fellowship, [fol. 68] Inc. during the years 1954 and 1955. (2) The questions are not, and on the state of the record cannot be found to be pertinent or relevant to the inquiry. (3) The questions are a mere fishing expedition, and as such cannot be allowed. (4) The questions themselves violate Dr. Uphaus' individual rights under the first, fourth and fourteenth amendments of the Federal Constitution, and under part one, articles four, five and nineteen of the Constitution of the State of New Hampshire.

Mr. Wyman: I only want to say, Your Honor please, that I disagree with my brother on the evidence Dr. Uphaus

has given today. If evidence is required, I think that Dr. Uphaus' testimony on the stand has more than supplied any prima facie reason for examining, if Your Honor believes that a reason is necessary. However, on the issue of relevancy, it is respectfully submitted that the questions contained in the subpoenae are relevant on their face, in the light of the transcripts of the previous testimony which indicate the substantial affiliation with organizations cited as subversive or Communist controlled, whether or not after notice and hearings. As far as the fishing expedition is concerned, and individual rights of privacy, I can only say that I understand the law to be in this type of investigation that once a relevant question is asked and is found to be relevant, the only basis on which a witness can refuse to answer is to claim privilege of self-incrimination, or be found in contempt, once the question is found to be relevant. This is a fact-finding investigation, and it is submitted that the motion should be denied.

The Court: Has the subpoena that was served on Dr. Uphaus been marked here? I think it should be.

Mr. Wyman: I do not believe it has been marked. That is the original, and it has the return of service upon it, Your Honor.

The Clerk: Is that the one for 1954 or 1955?

Mr. Wyman: That is the one for 1955.

The Clerk: What about 1954?

Mr. Wyman: I believe that is accomplished by agreement of counsel that there was service on both subpoenae and that both matters could be heard today. I believe that was agreed to by myself and Brother Bownes.

Mr. Bownes: That is right, Your Honor.

The Court: All right.

The Clerk: Willard Uphaus, in Equity 744 and Equity 521, the Court has made the following finding: January 5, 1956. Willard Uphaus is found and adjudged in contempt of this court. Willard Uphaus is ordered committed to the Merrimack County Jail, there to remain until purged of his contempt.—You are now in the custody of the Sheriff.

[fol. 69] Mr. France: Your Honor.

The Court: Mr. France.

Mr. France: Your Honor please, may we suggest bail pending an appeal, and if so, will Your Honor be so kind as to fix bail.

The Court: I would like to hear from the Attorney General.

Mr. Wyman: May I have just a moment, Your Honor?

The Court: Yes, sir.

Mr. Wyman: Your Honor please, ~~this is a very difficult~~ thing for me to say. Mr. Uphaus was first subpoenaed (sic) in June of 1954. The legislature continued the investigation, and has continued the investigation for a period ending on June 30th, 1957, and has appropriated quite a number of thousands of dollars for that purpose. I don't know whether it is going to be necessary to go on until June of 1957, but one thing is sure—if this witness is admitted to bail in a nominal amount, the information is not going to be furnished to the legislature for a good many months yet to come. I therefore, in spite of the fact that I recognize that a considerable amount of calumny may be involved, respectfully take the position that I oppose the granting of bail in any nominal amount, and in fact would direct the discretion, of Your Honor as to whether or not it should not be made clear now that this information is in the interest of the security of the state, it should be given, or should be waited out. Therefore I have got to say that I do not recommend the admission of Mr. Uphaus to bail.

Mr. Bownes: If it please the Court, I would like to first point out that while this questioning of Dr. Uphaus has had a long history, starting with the original proceeding in 1954, at no time have Dr. Uphaus or his counsel in any way tried to delay the natural procedure of justice in this matter. In regard to the appeal, Dr. Uphaus came into court last June and said at that time if the Court would waive—he had been sentenced because of the question of jurisdiction—he said he would be willing to submit at that time to further questioning by the Attorney General and meet the very serious constitutional questions involved. We took an appeal to the Supreme Court at that time after Judge Griffith refused to waive the fine. We took that to the Supreme Court in September, and a decision came down very soon thereafter. We had the case set for Janu-

ary, with Mr. Wyman's approval, and made no attempt to delay matters thereafter. I would like to point out to Your Honor that a case involving the same issues involved here was argued on Tuesday by the Attorney General—the so-called Sweezy case. That case may decide some very important constitutional questions involved in this case. I would like further to point out that pending in the [vol. 70] Supreme Court of the United States at this time is the so-called Nelson case. The question is whether state investigations are superseded by Federal legislation and Federal investigation. A decision in that case is pending and is expected in the very near future, and the appeal in that case might take care of the appeal in this case. In the interest of justice and equity and the serious constitutional questions involved, I believe he should be admitted to bail. I can assure the Court we will not seek the appeal question already raised and will do everything in our power to present the issues to our own Supreme Court just as soon as possible, and as soon as the record is printed. Thank you, Your Honor.

Mr. Wyman: Your Honor please, I cannot change my position. This witness has testified that he never had any intention of bringing the documents into court. It would be a brief affair for the witness to get the cards. Your Honor has made no order on the issue of the correspondence, which might take more time to accumulate. This is a very important matter, Your Honor. It is something which involves the root of the power of the state with respect to fact finding by the general court. I submit that the time has come when it is to the advantage of all concerned to have it unequivocally stated that when a witness takes the position of being wilfully in contempt of the Superior Court, he should face the consequences of it. I therefore cannot recommend bail.

Mr. France: Your Honor, even in cases where people are convicted of crimes under the Smith Act and other similar cases, where the matter is taken up on an appeal, bail is granted, and the question here, which seems to me to be one which involves many serious constitutional questions, it must appear to Your Honor that both Mr. Uphaus and his counsel firmly believe that he is justified in law in refusing to furnish the guest list which Your Honor has

ordered, so that there is a serious question to be discussed on appeal. The form in which Your Honor's order has been made—namely, that he purge himself, means that if bail is not granted in a reasonable amount the witness would have to be detained—having been convicted of no crime—detained individually until such time as the appeal court would act. It seems to be clear to me that this is a case where there should not only be bail, but bail in a reasonable amount.

The Court: I will agree in the first instance that your client should be admitted to bail. On the other hand, I believe that the general court of this state was acting in as much seriousness in passing the joint resolution and the prior legislation—as seriously as is your client in his stand. I think that it is fairly serious under those circumstances to take the position that your client did. What do you [fol. 71] suggest as to the amount of bail?

Mr. France: I would suggest one thousand dollars, Your Honor, and I think that both my co-counsel and myself can assure Your Honor that Dr. Uphaus will be here when required by the court, if he is living and able to come.

The Court: That basically is the purpose of bail, is it not, Brother Wyman?

Mr. Wyman: That is basically the purpose of bail, Your Honor, which, of course, is just why I cannot recommend bail on behalf of the state. I am in the curious position of being in this case both the moving party under the statute, and also a delegated agent. If there are in fact subversive names on the cards, the state is entitled to have them and to have the help of the Federal authorities in determining the facts. I do know that the wilful conduct of this witness is a matter of great seriousness, and he has been equally wilful before the general court. I do think that the general court is entitled to this information, and that if Your Honor stands firm we will get it.

Mr. France: I might call attention to the fact—although it is not binding on you—that in a similar situation Mr. Sweezy was admitted to bail of one thousand dollars pending appeal. It seems to me with the seriousness of the questions of law here involved, and with the character of the person involved, that that amount should be ample.

The Clerk: Willard Uphaus, the Court has set bail at Fifteen Hundred Dollars (\$1,500.00.) Am I authorized to take bail, Your Honor?

The Court: You are authorized to take bail, Mr. Callahan.

[fol. 72]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE
Merrimack,
No. 4533.

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

Argued December 4, 1956.

Petition, by the Attorney General under RSA 491:19, 20, for an order to compel compliance by the defendant with two subpoenas *duces tecum* served upon him in the course of a legislative investigation of subversive activities conducted by the Attorney General pursuant to resolutions appearing in Laws 1953, c. 307, and Laws 1955, c. 497.

A similar petition was previously dismissed for want of personal service upon the defendant within the jurisdiction. *State v. Uphaus*, 100 N.H. 1. Such service now having been had, the Attorney General seeks to compel compliance with a summons issued for the taking of evidence by him on August 31, 1955, as well as with the summons issued for the witness' appearance before him on September 27, 1954. See *State v. Uphaus*, *supra*, 3. By the subpoenas in question the petitioner sought to require the witness to produce guest registrations at the New Hampshire World Fellowship Center at Albany, New Hampshire for the 1954 and 1955 seasons; to disclose the names of employees at the Center for the same seasons; and to produce "all correspondence with or concerning persons who presented speeches, addresses, panel discussions, or topics" at the Center during those seasons. Trial by the Court (*Grant, J.*).

Over the objection of the defendant and subject to his exception, he was ordered to produce the guest registrations in question. His objection to disclosure of the names of employees was sustained; and the Court transferred without ruling the question of whether he may properly be required to produce the correspondence in question. The defendant's exceptions to rulings made in the course of the hearing, including the denial of his motion to dismiss the petition, were likewise reserved and transferred. Upon the defendant's refusal to comply with the order for the production of guest registrations, he was found and adjudged in contempt and ordered committed until he should purge himself of his contempt. Pending transfer of his exceptions he was admitted to bail. Other facts are stated in the opinion.

Louis C. Wyman, Attorney General (by brief and orally), pro se.

Royal W. France (of New York) and *Nighswander, Lord & Boines* (*Mr. France* and *Mr. Boines* orally), for the defendant.

OPINION—Decided February 28, 1957.

PER CURIAM. New Hampshire World Fellowship Center, Inc. is a New Hampshire corporation which maintains accommodations for the public at Albany, New Hampshire, during the summer season. By means of a sign near the highway the public is invited to stop there at specified rates. [fol. 73] The defendant, a native of Indiana and resident of New Haven, Connecticut, has been executive director of the Center since 1953. He described the Center thus: "The World Fellowship of Faiths is a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose."

In the course of interrogation by the Attorney General, both privately and before the Court, the defendant furnished the names of persons who spoke or conducted

discussions at the Center in the course of the 1954 and 1955 seasons. Some twenty persons, all non-residents, were named by the witness as speakers in 1954, and over twenty-eight as speakers in 1955, a number of the latter being persons who had spoken in 1954. Information in the possession of the Attorney General concerning some of these persons and their connection with organizations or agencies considered to be communist-influenced or controlled, was contained in his report to the 1955 Legislature, which was before the Trial Court. Attorney General's Report on Subversive Activities, New Hampshire, 1955, pp. 136-156. Likewise, information concerning the defendant's connections with and support of similar organizations was before the Court in the same report. *Id.*, pp. 162-175.

The defendant in the course of the proceedings has placed no reliance upon the Fifth Amendment to the Constitution of the United States, or the Fifteenth Article of the New Hampshire Bill of Rights. He testified that he was not a Communist and never had been, and that none of the speakers at the Center, or its guests, were to his knowledge Communists, although he was aware of the connections held by many of them and frankly conceded his own activities in past years. He testified that at no time at the Center was there any advocacy of overthrow of the government by force or violence. A teacher by profession, and holding a Ph.D. degree in religious education from Yale, he described himself as a pacifist, and believer in a "form of Christian social society."

The witness testified that the Center could accommodate a maximum of sixty persons for a meal, and that the guest register for the 1954 season consisted of approximately three hundred sixty names and addresses, upon three by five cards, kept by him "in an office" in New Haven. He testified that the register for 1955, similarly kept, consisted of about two hundred fifty names and addresses up to August 31, 1955, and "something over three hundred" for the summer. In refusing to produce the registrations, the witness characterized the inquiries of the Attorney General as an "attempt . . . to harass and intimidate me and to destroy the work of the World Fellowship of Faiths" and "a direct invasion of Christian conscience, and au-

thority higher than that of the state." He refused upon the ground of conscience to give the names and addresses "of people who to my knowledge have never done anything to injure their country and who came to World Fellowship Center solely for vacation, recreation and friendly discussions"; because to do so "would turn [him] into a contemptible informer" and he could not "involve innocent people in the Attorney General's network." Specifically he relied upon the First and Fourth Amendments to the Constitution of the United States and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

[fol. 74] In this court, the defendant has relied upon the same constitutional provisions. He contends that the investigation is unconstitutional and invalid by reason of the decision of the United States Supreme Court in *Pennsylvania v. Nelson*; 350 U.S. 497. He further contends that the information sought by the petitioner has not been shown to be relevant or pertinent to the subject of the investigation, that information before the Trial Court was incompetent because hearsay, and that the order committing him until he should purge himself of his contempt is invalid because indefinite and constituting cruel and unusual punishment. Constitution of the United States, Amend. VIII.

I. We are confronted at the outset by the contention that the investigation is shown to be invalid by the decision of the United States Supreme Court in *Pennsylvania v. Nelson*, *supra*. The same contention was advanced without success on motion for rehearing in *Wyman v. Sweezy*, 100 N.H. 103 and was strongly urged in *Kahn v. Wyman*, 100 N.H. 245. In the latter case, after full consideration the opinion was expressed that *Pennsylvania v. Nelson*, *supra*, did not preclude conduct of the "investigation of subversive activities within the state as distinct from . . . the prosecution of crimes." See also, *State v. Raley*, (Ohio) 136 N.E. (2d) 295, 307. We see no present reason to recede from the views previously expressed.

In this connection it may be of interest to note that courts of other jurisdictions which have thought it necessary because of the *Pennsylvania* decision, *supra*, to dismiss prosecutions charging offenses against the state as

well as the federal government have done so with reservation of the possibility that some "kind of sedition [might be] directed so exclusively against the State as to fall outside the sweep of . . . *Pennsylvania v. Nelson*." *Commonwealth v. Gilbert*, (Mass.) 134 N.E. (2d) 13, 16. See also, *Bradley v. Commonwealth*, (Ky.) 291 S.W. 843, 849.

The circumstance that the usefulness of the investigation authorized by the resolutions of 1953 and 1955 has been diminished by the holding of the *Pennsylvania* case does not preclude continuance of the investigation for any purposes which may remain open. See 70 Harvard L.R. 95, 119, and footnote 148; Note, 31 Ind. L.J. 270, 281-5. The defendant's argument that the investigation is invalid cannot be adopted.

II. The witness Uphaus contends that the record fails to establish the relevancy of the evidence sought and ordered to be produced. It is fundamental that "the power exercised by a committee . . . must be within both the authority delegated to it and also within the competence of the [legislative body] to confer upon the committee." *United States v. Lamont*, 18 F.R.D. 27, *aff'd* 236 F. (2d) 312. Although as a result of *Pennsylvania v. Nelson*, *supra*, the State is without authority to prosecute offenses against the federal government, the power to investigate to determine "whether subversive persons as defined in said [1951] act are presently located within this state" and whether "necessary legislation" should on that account be recommended (*Id.*) remains unimpaired. In this connection it may be well to observe that any questions of policy regarding this legislation are not for the court but belong exclusively to the Legislature and this distinction we are bound to respect. *Chronicle & Co. v. Attorney General*, 94 N.H. 148, 151. If through its legally authorized committee, the Attorney General (*Wyman v. Sweezy*, 100 N.H. [fol. 75] 103, 105), the Legislature has asked for relevant information it is entitled to it. The test to determine whether the question is relevant is to inquire whether "the question is directed at a possible answer . . . which would be reasonably concerned with the main object of the investigation." *Wyman v. Sweezy*, *supra*, 106.

To establish relevancy in the case before us; the petitioner relied substantially upon the content of Uphaus' answer, and the information concerning him and speakers at the Center which is summarized in the report to the 1955 Legislature hereinbefore cited. The witness objected to the latter information as hearsay and incompetent. This objection has not been strongly urged before us and we have already rejected this argument in *Wyman v. Sweezy, supra*, decided since the hearings of the Attorney General in this case were held. The petitioner is clearly entitled to act upon "reasonable or reliable" information (Laws 1953, c. 307) which he may present to the Court, even though in hearsay form to establish the relevancy of his inquiry. *Wyman v. Sweezy, supra*, 111. As was observed in *United States v. Sacher*, 139 F. Supp. 855, 860, in considering a similar objection: "Obviously hearsay testimony . . . may sufficiently establish . . . pertinency of the questions here involved and the reasons for asking them."

The witness refuses to produce the guest registrations of World Fellowship, claiming in effect that they cannot possibly be reasonably concerned with "whether subversives are presently located within the state." Laws 1953, c. 307. In determining the worth of this objection it appears necessary to detail some of the information disclosed by the record as being in the Attorney General's possession and bearing on whether the question as to the guest cards was relevant, since the context in which a question is asked may "indicate its relevancy . . ." *Wyman v. Sweezy, supra*, 107.

It appears that the witness, while he does not claim its protection here, has pleaded the Fifth Amendment when questioned about Communist matters by a congressional committee. He was a supporter of numerous organizations on the subversive list prepared by the House committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities. He attended the Warsaw Congress, which he said he knew was "Soviet influenced," at the invitation of a man who he admittedly knew had an international reputation as an open Communist. At this Congress the United States was attacked for allegedly using germ warfare in Korea.

Not less than nineteen speakers invited by Uphaus to talk at World Fellowship had either been members of the Communist Party or had connections or affiliations with it or with one or more of the organizations cited as subversive or Communist controlled in the United States Attorney General's list. His attorney asserts that the witness is "not at all concerned about his associations." In this connection it may be noted that throughout the examination of Uphaus the latter dwelt at length on the high ideals of his organization and his love for and belief in freedom. It is not for this court to pass on the truth of these representations. The committee was at liberty unquestionably to believe the witness. On the other hand, it was equally free to decide that Lord Salisbury's famous dictum might be applicable: "If you will study history, you will find that freedom, when it has been destroyed, has always been [fol. 76] destroyed by those who shelter themselves under the cover of its forms, and who speak its language with unparalleled eloquence and vigor."

In many instances Uphaus knew that the speakers at World Fellowship were members of one or more organizations cited as subversive by the United States Attorney General, but he claimed he did not know whether they or such persons as Paul Robeson with whom at times he had had correspondence, were Communists. However this may be, we have already held that whether persons "were or were not in fact Communist Party members or subversive persons is not decisive on the issue of relevancy." *Wymän v. Sweezy, supra*, 112. The Attorney General did not have to prove them Communists or subversives before he asked questions which were directed at a possible answer which would be "reasonably concerned with a main object of the investigation. *Id.*, 112. It is equally true that the Attorney General was not required to prove that World Fellowship was a subversive organization before making inquiry concerning it. *Id.*, 112.

Literature was distributed at the World Fellowship Center, examples being such material as a pamphlet by Molotov on Soviet policy and another on American-Russian friendship, the opening line of which was "Back to Stalin-grad." However, as Mr. Uphaus himself said, it made no

difference to him whether his guests believed in Communism or not. "It depends on his conduct while he is there" whether he is permitted to remain. The witness admits that he has had correspondence with persons who have been reputed or alleged to be Communist Party members. He also concedes that he said "a grace" which contained the following words, "God bless the revolution," but he claims this referred to "any revolution." As previously noted, belief in his statement was not compelled. A book available at the Center entitled "World Fellowship of Faith," contained an article which after supporting Communism reads: "If any government stands in the way that government must be overthrown." And again, there was a statement to the effect, "If any people stand in the way, that people must be destroyed; . . . we must banish God from the skies and capitalists from the earth." The witness denies that he subscribes to "everything" in this publication.

In the light of this information and in this setting, Uphaus maintains that the guest registrations of World Fellowship cannot possibly contain any information bearing on whether, at the time of the investigation, subversive persons were "located within this state." *Wyman v. Sweezy*, 100 N.H. 103, 106. We believe this contention so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Attorney General and the law applicable to the situation. Other authorities have reached the same conclusion in similar circumstances. See *Flaxer v. United States*, 235 F. (2d) 821; *Marshall v. United States*, 176 F. (2d) 473; *Morford v. United States*, 176 F. (2d) 54.

The case of *Rumely v. United States*, 197 F. (2d) 166, cert. denied, 334 U.S. 843, relied upon by the witness, so far from being an authority for his position, appears upon analysis to support the State's contention. In the *Rumely* case the investigation was concerned with lobbying and the question was whether a publisher of books must disclose the names of those who purchased them. The Court held that he did not have to and that the effort to influence public opinion upon national affairs was a protected freedom of speech which Congress could not abridge "unless [fol. 77] urgent necessity in the public interest require it to

do so." *Id.*, 173. The opinion went on to assert that "on the contrary," Communism poses a threat to "the security of this country," and for that reason Congress had "the power and a duty to inquire into Communism and the Communists." *Id.*, 173, citing *Barsky v. United States*, 167 F. (2d) 241, cert denied, 334 U.S. 843. (Emphasis ours.)

In passing it may be well to note in commenting on the stress which the *Rumely* case lays on the "urgent necessity" of investigating Communist activities as balanced against the right to freedom of speech, which the witness contends is controlling here, that our Legislature, in common with the federal government and most other states, has found this necessity exists to a degree so urgent, and has given the reasons so cogently, that it seems unnecessary to revert to them again, even in the most summary fashion. It may also be worth considering that for many years guest registrations in public places such as World Fellowship have been open to inspection "at all times" by "the sheriff, or his deputies and to any police officer." RSA 353:3. So far as appears in this State, no one has ever questioned the validity of such a law until the Communist issue arose.

In conclusion, we believe that the Legislature through its lawfully authorized committee, the Attorney General, has demanded clearly relevant information. We hold it is entitled to it. Accordingly, the order of the Superior Court requiring the witness to produce the guest registrations is sustained and his exception is overruled.

III. The Trial Court transferred without ruling the question of an order requiring the production of all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship Inc. during the 1954 and 1953 seasons." The petitioner made it apparent at the trial that the subpoenas were intended to require production of correspondence conducted during the specified years only.

The witness testified that in 1954 there was correspondence with some fifteen to twenty persons, and that correspondence was conducted in 1955 with certain specified speakers. He testified that there "was never," in any of the correspondence, "anything suggesting that they discuss the overthrow of government by force or violence, or

any topics relating to the overthrow of government by force and violence, or that they discuss Marxism or Leninism." He declined to produce the requested correspondence, relying upon the defense of irrelevancy, and of violation of the First, Fourth, and Fourteenth Amendments to the Constitution of the United States, and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

As was pointed out in *Wyman v. Sweezy*, *supra*, the legislative committee was not bound to accept the assurance of the witness that the correspondence in question contained nothing relevant. "The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of government was in fact advocated before it could inquire of him concerning the lecture." *Id.*, 108.

The defendant vigorously objects to use made of the list of organizations cited by the United States Attorney General as subversive or communist controlled. Reliance is placed by him upon various holdings of the courts, establishing that connection with organizations so listed is not [fol. 78] proof of guilt of subversion. We recognize that such a listing of itself establishes neither the character of the organization nor of persons associated with it. *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, *supra*. *Barsky v. Board of Regents*, 347 U.S. 442, 456, 460. See also, *Wieman v. Updegraf*, 344 U.S. 183; *Schactman v. Dulles*, 225 F. (2d) 938, 943; *Lawson v. Housing Authority*, 270 Wis. 269; *Hughes v. Board*, 141 N.Y.S. (2d) 392.

The question under our statute is not whether the listing by the Attorney General, admittedly hearsay as used in these proceedings, is competent evidence upon which the rights of individuals to employment or housing may be made to depend, but whether it constitutes information which the legislative committee may consider so far "reasonable or reliable" as to warrant further inquiry concerning the persons affected. The information in the petitioner's possession, including the listing by the Attorney General of organizations with which the defendant and speakers at the Center had connections, could be found sufficiently reasonable or reliable to warrant further inquiry concerning their relationship with each other and their activities at the Center.

The possibility that the correspondence which it is sought to have produced may yield no information tending to show subversive purposes is not determinative of the relevancy of the request for its production. As was pointed out in *United States v. Orman*, 207 F. (2d) 148, 154, 155, the question of relevancy turns upon the substance of the question, and the possibility that the answer may be relevant, rather than upon the actual character of the answer when obtained. "Although his answer might have proved that he was not [linked with unlawful activity] it was not his right to deny this knowledge to the Committee." *Id.*, 155. See also, *Wyman v. Sweezy*, *supra*, 106, 112. We conclude that an order for production of the correspondence would not be invalid upon the ground that inquiry concerning it could not be found relevant.

The question remains whether such an order would violate constitutional rights under the First Amendment to the United States Constitution, or under the Fourth Amendment guaranteeing the right to be secure against "unreasonable searches and seizures," the former of which at least becomes applicable to state action by reason of the Fourteenth Amendment (*Gillow v. New York*, 286 U.S. 652, 666); or rights, under the state Constitution, "of Conscience" (Art. 4th), of religious freedom (Art. 5th), and "to be secure from all unreasonable searches and seizures." (Art. 19th). We are of the opinion that the order would not violate such rights as a matter of law. By public exposition of their views, the defendant and the speakers in question chose overtly to place their views in the public eye. As against the expressed public interest in learning the nature and purposes of these expositions, based upon reasonable ground for believing that they may have been subversive in character, the witness or the speakers may not now enshroud their purposes in a cloak of the "freedom of silence." See 47 Mich. L.R. 181, 213-222. Their right is to be free from "unreasonable" searches and seizures; and [fol. 79] disclosure of the contents of their correspondence, like disclosure of the content of the witness Sweezy's lecture, may be compellable in the interest of satisfying the public need for disclosure of circumstances reasonably thought to be concerned with the object of the legislative investigation. *Wyman v. Sweezy*, *supra*, 106-109.

It is not to be disputed that the right to be exempt from arbitrary disclosures of personal and private affairs has always been regarded as of great importance. *Sinclair v. United States*, 279 U.S. 263, 292. See also, *Boyd v. United States*, 116 U.S. 616, 621-2. An order for the production of papers under a subpoena *duces tecum* may constitute an unreasonable search and seizure. *Hale v. Henkel*, 201 U.S. 43, 76. But one which requires the production of relevant documents in furtherance of an authorized investigation is not such a search and seizure. See *United States v. Orman*, 207 F. (2d) 148, 158. It is the "unjustifiable intrusion" which violates the Fourth Amendment. See *Brandeis, J. dissenting, in Olmstead v. United States*, 277 U.S. 438, 478-9.

The principal issue with respect to the order sought in this case is whether production of the correspondence is relevant (*United States v. Orman, supra*, 158), and within reasonable and definite limits. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 196, 202-214. It might be thought that production of all correspondence requested, whether or not relating to proposed speaking engagements at the Center, would exceed the bounds of relevancy. On the other hand correspondence not directly concerned with such an engagement might be thought relevant to show the defendant's acquaintance with the speakers and their views and to shed light upon the probable nature of their discussions at the Center, some of which, according to the defendant, consisted merely of telling "stories of their lives, their interests, and their problems." We therefore consider that an order to produce the correspondence specified by the subpoena could be found warranted by the record and would not be precluded as in violation of constitutional rights. *Barškej v. United States*, 167 F. (2d) 241; *United States v. Orman, supra*.

The atmosphere of religion which surrounds the defendant's activities does not necessarily insulate them from investigation. The petitioner voices a purpose "to show that the advocacy of this so-called peace crusade is for the purpose of achieving a quicker and a cheaper occupation by the Soviet Union and Communism." Only by investigation of these activities can it be determined whether their purpose is what the committee claims, or whether the organ-

ization of which the defendant is director is in fact "an organization the bona fide purpose of which is to promote word peace . . . through constitutional means" which the statute excludes from the definition of a "foreign subversive organization" (RSA 588:1), and which the defendant claims the World Fellowship Center to be.

The exception to denial of the motion to dismiss is overruled. Upon remand the Trial Court may exercise its discretion with respect to the entry of an order to enforce the command of the subpoena for the production of correspondence.

IV. Finally the argument of the defendant that the order of committal for contempt constitutes an "indeterminate sentence" which is invalid because "cruel and unusual punishment" (Const. of the U.S., Amend. VIII; N.H. Const., [fol. 80] Pt. 1, Art. 33rd) merits brief consideration. The function of the order entered below was not punishment in vindication of the public interest, but coercion to compel compliance with the prior order of the court to produce the registrations. *Penfield v. S. E. C.*, 330 U.S. 585, 593. See also, *United States v. United Mine Workers*, 330 U.S. 293, 302; *Yates v. United States*, 227 F. (2d) 844. Consequently statutes regulating the imposition of sentences for crime are inapplicable. The committal ordered is terminable upon the witness purging himself of contempt, and is not considered violative of the constitutional provisions relied upon by the defendant.

Remanded

Duncan and Goodnow, JJ. dissented in part.

DUNCAN, J., *dissenting in part*: I concur in all of the foregoing opinion, except section II thereof. In my judgment the order requiring the defendant to produce the guest registrations should be vacated, and I therefore dissent from section II of the opinion for reasons hereinafter expressed.

As a result of *Pennsylvania v. Nelson*, 350 U.S. 497, the investigation authorized by the Legislature of this state is now limited to investigation of the question of "whether subversive persons as defined in said [1951] act are presently located within this state" (Laws 1953, c. 307) and

whether "necessary legislation" should on that account be recommended. *Id.* The right of the committee "to exact testimony and to call for the production of documents must be found in this language." *United States v. Rumely*, 345 U.S. 41, 44. See also, *United States v. Kamin*, 136 F. Supp. 791; *United States v. Lamont*, 236 F. (2d) 312. The inquiry must therefore be pertinent to the issue of whether subversive persons "are presently located within this state" if it is to be permitted.

The committee's demand for production of the guest registration was supported by no claim of information in the possession of the committee concerning the guests (other than speakers) to indicate that their identification by name might relate to the subject matter of the investigation. Cf. *Wyman v. Sweezy*, 100 N.H. 103, 112. The demand rested only upon the testimony of the witness as to the total number of guests for each season, in the course of which he stated that "very few" of the guests came from the State of New Hampshire.

In *Wyman v. Sweezy*, *supra*, it was pointed out that a question may not be sustained as relevant "on a mere possibility that it might lead to later relevant questions" (*Id.*, 106); and that the resolution authorizing the investigation "does not . . . authorize [the Attorney General] to examine private citizens indiscriminately in the mere hope of stumbling upon valuable information." *Id.*, 110. The information sought by the committee is not limited to the names of guests resident here (Cf. *Rumely v. United States*, 197 F. (2d) 166, 176) nor is it represented that the names cannot be obtained by less objectionable methods (see *Dennis v. United States*, 341 U.S. 494, 542; note, 56 Columbia L. Rev. 798, 801), or that production of the registrations may show the activities of the Center to be subversive. The [fol. 81] conduct of the guests does not fall within the same category as that of the defendant and speakers at the Center, which has consisted of public endorsement and advocacy of ideas; and no suggestion has been made that by mere presence at the Center the guests became members of any organization, or advocated any action, lawful or otherwise. The committee seeks to know "who was there," in order by further examination to "find out what went on."

In view of the restricted purpose of the investigation, which is more closely confined than the purposes of the congressional investigations with which the cases relied upon by the majority were concerned, production of the registrations is at best only a diffused and remote approach to the issue of whether subversive persons are "presently located" in New Hampshire, and can of itself become relevant only when coupled with other relevant information concerning the guests which is not shown to be at hand. See *United States v. Mathues*, 33 F. (2d) 261; *United States v. Barry*, 29 F. (2d) 817; *Bowers v. United States*, 202 F. (2d) 452. See also, *Watkins v. United States*, 233 F. (2d) 681 at 694. "It is clear that authority over a subject matter does not import authority over all activities of persons concerned in that subject matter." *Rumely v. United States*, 197 F. (2d) 166, 176.

Enforcement of the subpoena goes beyond the inquiry held relevant in *Wyman v. Sweezy*, *supra*. It calls for the names of persons largely non-resident who assembled at different times, ostensibly to discuss topics of religious, political, and economic import. The "possible answer" will not of itself be concerned with the "main object of investigation." (*Id.*, 106);

The order of the Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution. *Wyman v. Sweezy*, *supra*, 113. See *Edgerton*, dissenting, *Barsky v. United States*, 167 F. (2d) 241, 254. Constitutional rights of the guests as well as of the witness are involved, and the Court need not restrict itself to consideration of the rights of the witness alone. See *Barrows v. Judson*, 340 U.S. 249; *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 187; Comment: Inquiry Into Political Activity, 65 Yale L.J. 1159, 1183-9. The role of the guests with respect to the subject matter was not essentially different from that of the purchasers of pamphlets pertaining to national issues in the *Rumely* case *supra*: "On a record such as this so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment." *Rumely v. United States*, 197 F. (2d) 166, 173. See also, *United States v. Rumely*, 345 U.S. 41, 46.

The record does not disclose such a public necessity for production of the registrations as to warrant abridgment of the privilege of the individuals concerned to exercise their civil liberties free from threatened involvement in the legislative investigation of subversive persons.

I am authorized to state that *Goodnow, J.* concurs in this dissent.

[fol. 82]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

JUDGMENT REMANDING CASE—February 28, 1957

In the case of No. 4533 Wyman v. Uphaus the court upon February 28, 1957, made the following order:

Remanded.

Concord, February 28, 1957

By order of the Court:

George O. Shovan, Clerk.

[fol. 83]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

Merrimack, SS.

No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

DEFENDANT'S MOTION FOR A RE-HEARING—

Filed March 9, 1957.

Now comes the defendant, Willard Uphaus, and respectfully moves for a re-hearing of the cause and assigns therefor the following reasons:

1. The Court has not limited its order to furnishing names of guests to persons presently residing in New Hampshire. If the guest list were produced it would place in the hands of the Attorney-General the names of persons

over whom neither the Court nor the Attorney-General have jurisdiction. There is no suggestion of a showing that such itinerant guests were involved in any subversive or unlawful action—and the Court has not sufficiently considered the damage that would be done to innocent persons in the light of the Attorney-General's own admission that names brought to light in such investigations in one state are passed on to Attorneys-General in many other states. In the climate of the United States today such use of names may become destructive even of the means of livelihood [fol. 84] of persons who are guilty of nothing. We wish to urge the rule of comparative injury as a test between the value of such names to the Attorney-General and the injury to such guests.

2. The Court failed to take account of the right and duty of defendant, if he was to carry out his purpose in the promotion of peace, to associate with those holding views contrary to his own. His position was that we will never make peace by talking only with those who agree with us. It is basic to defendant's position that persons of differing opinions should meet to exchange views. Such right is protected by the First and Fourteenth Amendments. In the light of this purpose, it was error to attribute to defendant views expressed by other persons at the Warsaw conference—views with which, by his sworn and uncontradicted testimony, defendant disagreed. It was equally error to make such views of others a justification for the order. It was as much error to attribute to defendant views in a book merely because it was at the Center with no showing of whether or not it was used or whether defendant ever read it or approved of it as it would be to hold a librarian responsible for statements in books by Karl Marx which are in every well-stocked library, or a teacher for all the conflicting views on economics in books used in college courses. We respectfully submit that in the foregoing respects the order of this Court restricts the defendant's freedom of speech and association under the First and Fourteenth Amendments to the United States Constitution and conflicts with the principles enunciated by the United States Supreme Court in *DeJonge v. Oregon*, 299 U. S. 353.

[fol. 85] 3. The totality of the "subversive activity" at the World Fellowship Center relied upon by the Attorney-General appears to consist of the quotation of a grace stating:

"Some have bread, some have none, God bless the revolution." That such a trifling incident should be seriously urged is indicative of the threadbare character of the Attorney-General's case and of the hysterical atmosphere of investigation, such as the present one. Obviously this quotation was no more than a light jest; to give it a sinister meaning is hardly reasonable; the word, revolution, surely is not to be equated with the concept of the violent overthrow of the government. Indeed, the New Deal is often referred to as a revolution. The Industrial Revolution, one of the greatest in history, did not involve the overthrow of government. The defendant testified that he favored a transition to socialism by peaceful and constitutional means. This kind of revolution is certainly consistent with our constitutional scheme.

4. The Court failed to take into account that the Eighth Amendment to the Constitution of the United States, which became applicable to State action by the Fourteenth Amendment, prohibiting cruel and unusual punishments was violated by the sentence of imprisonment until the defendant answered the questions. How far can the legislature or the Court go in compelling an individual to violate his conscience? Even in times of war this country's draft laws recognize that there should be leeway for the conscientious objector.

[fol. 86] That the punishment is unusual is borne out by the fact that numerous cases have arisen in this type of case where witnesses have refused to give names and only in New Hampshire, so far as we can ascertain, has such a sentence been imposed. That it is cruel is self-evident. It is a cruel attempt to break the will of a man with conscientious scruples and to compel him either to violate the dictates of his conscience or to face prison for life, a sentence out of all proportion to the offense.

5. The Attorney-General stated to this Court that in another forum the defendant had invoked his privilege

against self-incrimination under the Fifth Amendment to the United States Constitution, and this Court relied upon that statement of the Attorney-General in reaching its decision. There was no evidence in the Court below of any such incident and the matter was not even raised in those proceedings. Assuming that the incident did occur, and assuming, without conceding, its relevance, the defendant had no opportunity on the record before this Court to set forth the context in which it took place, or the reasons for his conduct. Such reliance on matter outside the record is a clear violation of the privileges and immunities clause and the due process clause of the Fourteenth Amendment to the United States Constitution. It is in direct conflict [fol. 87] with the decision of the Supreme Court of the United States in *Slochower v. Board of Higher Education*, 350 U. S. 551.

We respectfully request an opportunity to brief and argue the assignments of error herein set forth.

Respectfully submitted,

Willard Uphaus,

By /s/ Hugh Bownes, Nighswander, Lord & Bownes,
Royal W. France, His Attorneys.

[fol. 88]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE
Merrimack, SS.

No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

PETITIONER'S REPLY TO DEFENDANT'S MOTION FOR RE-HEARING
—March 19, 1957—

Now comes the State of New Hampshire by Louis C. Wyman, Attorney General, and replying to the above entitled motion, paragraph by paragraph says as follows:

1. It makes no difference whether guests reside within or without the State of New Hampshire. Persons within the State—as they had to be to sign the Guest Register—are within the scope of the investigation. The General Court has the power and authority to investigate all persons within this State either presently or in the past, and such names are clearly relevant to a full and complete picture of the activities at World Fellowship, Inc. at Albany, New Hampshire. Reference to the climate in the United States, livelihood of persons, and guilt are merely another indulgence in paranoia. No injury to any guest is involved, but if there should be need for further investigation then such consequence is an unavoidable necessity of fulfillment of the fact-finding precept. This is the manner in which the Legislature informs itself for any contemplated legislation.

2. No First Amendment abridgment is involved here. What is assigned as Uphaus' position in regard to facts is merely counsel's view thereof. Other interpretations are consistent with the record and were in fact adopted by the Court. Investigation of who was at World Fellowship, Inc., Albany, New Hampshire, does not restrict association there, if otherwise lawful. Nothing in *DeJonge v. Oregon*, 299 U.S. 353, is to the contrary. This is investigation not proscription.

[fol. 89] 3. The claims of hysteria and attempted summation of the "totality of 'subversive activity' at World Fellowship, Inc." are oversimplified by counsel to the point of ludicrousness. One needs go no further than to refer to the record concerning the presence of William Hinton or Julian Schuman to warrant full and complete investigation of World Fellowship, Inc. That Uphaus has exercised the privilege of the Fifth Amendment of the United States Constitution in regard to World Fellowship, Inc. at hearings in Washington, D. C. in May, 1956, is matched by claims of the same Fifth Amendment on the part of witnesses in New Hampshire on questioning relative to activities at World Fellowship, Inc. in this State. On this the record is explicit and no amount of over statement by counsel can detract therefrom.

4. This paragraph is believed to be entirely without merit in the light of settled authorities cited in the main brief on file in the principal case.

5. In no manner, by stretching similarity to the point of torturing syllogistic reasoning, can *Slochow v. Board of Education*, 350 U.S. 551, be considered an authority contrary to the decision in the principal case. Slochow involved action without a hearing. Dicta indicated that with a prior hearing Slochow could be dismissed. He has in fact now been dismissed. Uphaus is in the process of a hearing—yet here he does not answer, and does not claim the privilege against self-incrimination. The cases are entirely dissimilar and Uphaus' position is logically and unreasonably untenable.

It is respectfully requested that defendant's motion for re-hearing be denied.

Respectfully submitted,

Louis C. Wyman, Attorney General, by /s/ Joseph F. Gall, Special Assistant to The Attorney General.

March 19, 1957

[fol. 90]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

#4533

WYMAN,

v.

UPHAUS.

ORDER DENYING MOTION FOR RE-HEARING AND MODIFYING
OPINION—March 27, 1957

Motion for rehearing denied; opinion modified as follows:

On page 4 of the duplicated opinion, strike out the first sentence in the second paragraph from the bottom of the

page which commences as follows: "It appears that the witness" etc.

Amend the second sentence in this paragraph to read as follows: "It appears that the witness was a supporter of numerous organizations on the subversive list prepared by the House Committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities."

March 27, 1957. Wheeler, J., took no part in the consideration of this motion.

[fol. 91]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—April 23, 1957.

1. Notice is hereby given that Willard Uphaus, the above named respondent, hereby appeals to the Supreme Court of the United States from the final judgment of this Court, which overruled his exceptions to the decree of the Superior Court of Merrimack County, State of New Hampshire, adjudging him to be in contempt of the Superior Court in and for said county of Merrimack, ordering him committed in the County Jail there to remain until purged of said contempt and directing that "upon remand the Trial Court may exercise its discretion with respect to the entry of an order to enforce the command of a subpoena for production of correspondence." Final judgment in this proceeding was entered on February 28, 1957. A

timely motion for rehearing, was made and denied on March 27, 1957, the Supreme Court of New Hampshire, however, modifying the opinion previously rendered on February 28, 1957.

This appeal is taken pursuant to 28 U.S.C., §2157 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

- (1) The papers on appeal in this proceeding to the Supreme Court of the State of New Hampshire.
- [fol. 92] (2) The Opinion of this Court, dated February 28, 1957.
- (3) The Order of this Court, dated February 28, 1957.
- (4) The motion for rehearing.
- (5) The Attorney General's reply to the motion for rehearing.
- (6) The Order of this Court, dated March 27, 1957, denying the motion for rehearing and modifying the Court's Opinion.
- (7) The Notice of Appeal.

III. The following questions are presented by this appeal.

(1) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed to require the delivery to the Attorney-General of lists of appellant's guests at the New Hampshire World Fellowship Center and to require the delivery of the appellant's correspondence with speakers at the said center, under penalty of indefinite confinement:

(a) Violates appellant's rights of free speech and association under the First and Fourteenth Amendments to the Constitution of the United States.

(b) Is not an unreasonable search and seizure in violation of appellant's right to due process under the Fourth and Fourteenth Amendments.

(c) Is not so vague and indefinite that it deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(d) Is arbitrary and unreasonable and thereby deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 93] ¶2) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed as above set forth, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government and with respect to which the Federal Government has already legislated to the exclusion of state legislation.

(3) Whether the reliance by the Supreme Court of New Hampshire upon so called "subversive lists" compiled by the Attorney-General of the United States and the Committee on Un-American Activities of the House of Representatives and upon the appellant's exercise before the said Committee of his constitutional privilege against self-incrimination, is not arbitrary and unreasonable, does not violate his rights of free speech, assembly and association and does not deprive him of his privileges and immunities—all under the Fourteenth Amendment to the United States Constitution.

(4) Whether the reliance by the Supreme Court of New Hampshire on appellant's assertion before the Committee on Un-American Activities of the House of Representatives does not deprive him of his right under the Fifth Amendment to the Constitution of the United States not to be a witness against himself.

(5) Whether Chapter 307, New Hampshire Laws of 1953, which the New Hampshire Supreme Court has construed

and applied as set forth above, constitutes a bill of attainder in violation of Article 1, §9, of the Constitution of the United States.

(6) Whether the sentence of the New Hampshire Supreme Court, committing the defendant to imprisonment until he answer the questions put to him, did not constitute cruel and unusual punishment within the Eighth and Fourteenth Amendments to the Constitution of the United States.

Dated, April 23rd, 1957.

/s/ Royal W. France, 40 Exchange Place, New York 5; New York; /s/ Hugh H. Bownes, Nighswander, Lord & Bownes, Laconia Savings Bank Building, Laconia, New Hampshire, Attorneys for Appellant.

To: Louis C. Wyman, Esq., Attorney General, State of New Hampshire, Concord, New Hampshire.

[fol. 95]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

DEFENDANT'S MOTION FOR A RE-HEARING—Filed June 25, 1957

The defendant Willard Uphaus respectfully moves for re-hearing of the cause for the following reasons:

The final judgment of this Court adjudged the defendant to be in contempt of the Superior Court in and for the

County of Merrimaack. The contempt arose from defendant's refusal to deliver to the Attorney General of New Hampshire lists of defendant's guests at the New Hampshire World Fellowship Center and his correspondence with speakers at the said Center. The said materials were demanded by the Attorney General in the course of an investigation conducted under Chapter 307, New Hampshire Laws of 1953.

On June 17, 1957, the United States Supreme Court rendered its decision in *Sweezy v. State of New Hampshire*, No. 175 October Term 1956, reversing this Court's judgment in *Wyman v. Sweezy*, 100 N. H. 103, that petitioner Sweezy was in contempt for refusing to answer questions as to his political associations in an investigation conducted by the Attorney General pursuant to the aforesaid statute, Chapter 307, New Hampshire Laws of 1953.

The United States Supreme Court held that the investigation deprived the petitioner Sweezy of due process of law under the Fourteenth Amendment. The basis for this conclusion was that the aforesaid statute of New Hampshire was too broad and vague a delegation of authority to the Attorney General with inadequate legislative protection of the witness to justify an investigation by the Attorney General, particularly in an area protected by the First Amendment to the Constitution of the United States.

The decision of the United States Supreme Court in the *Sweezy* case is necessarily dispositive of the case involving the defendant herein. Both involved investigations into "subversive activities" under the same statute now declared too broad to be valid and both involved inquiries into political associations. The decision of this Court in this case is explicitly predicated upon its decision in *Wyman v. Sweezy*, as a reading of the opinion indicates.

Finally, we believe that the facts in this case show as substantial an interference with First Amendment rights as was manifested in the *Sweezy* case.

Wherefore, it is respectfully prayed that this Court grant this motion for a re-hearing and that it summarily vacate

[fol. 97] the judgment of contempt herein and dismiss the contempt proceedings herein.

✓ Respectfully submitted,

Willard Uphaus,

By /s/ Hugh H. Bownes, for Nighswander, Lord & Bownes, Royal W. France, Leonard B. Boudin, His Attorneys.

Motion for rehearing denied by order of the Court July 9, 1957.

[fol. 100]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

#4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

CERTIFICATE OF DOCKET ENTRIES

Transferred from Merrimack County.

Attorney General represented by Louis C. Wyman.

Defendant represented by Nighswander, Lord & Bownes, and Royal W. France.

Case entered in New Hampshire Supreme Court August 31, 1956.

Order for briefs as follows: Defendant's brief by September 22, 1956; plaintiff's brief by October 15, 1956; hearing November Session, 1956.

Defendant's brief filed September 21, 1956.

Plaintiff's brief filed October 24, 1956.

Case argued December 4, 1956.

February 28, 1957. Per Curiam.- Remanded.

March 9, 1957. Motion for rehearing filed.

March 20, 1957. State's brief in reply to motion for rehearing filed.

March 27, 1957. Motion for rehearing denied; opinion modified.

March 29, 1957. Motion to stay forwarding of certificate.

April 2, 1957. Motion to stay forwarding of certificate granted.

April 26, 1957. Notice of appeal to United States Supreme Court filed.

/s/ George O. Shovan, Clerk of the New Hampshire Supreme Court.

April 26, 1957.

[fol. 101] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 102]

SUPREME COURT OF THE UNITED STATES

No. 332, October Term, 1957

WILLARD UPHAUS, Appellant,

v.

LOUIS C. WYMAN, Attorney General.

ORDER EXTENDING TIME IN WHICH TO DOCKET CASE—
July 18, 1957

Upon Consideration of the application of counsel for the appellant,

It Is Ordered that the time for docketing the above-entitled cause and filing the statement as to jurisdiction be, and the same is hereby, extended to and including August first, 1957.

/s/ Felix Frankfurter, Associate Justice of the
Supreme Court of the United States.

Dated this 18th day of July, 1957.

[fol. 103]

THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, SS.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable the Judges of the Supreme Court of the
State of New Hampshire

Greeting:

Whereas, lately in the Supreme Court of the State of New Hampshire before you, or some of you, in a cause between Louis C. Wyman, Attorney General and Willard Uphaus, defendant, No. 4533, wherein the judgment of said Supreme Court remanding defendant's exceptions to the order of the Superior Court of Merrimack County, State of New Hampshire, finding defendant in contempt of said Superior Court was duly entered on the 28th day of February A. D. 1957.

as by the inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-seven, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was duly submitted.

[fol. 104] On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, vacated with costs.

It Is Further Ordered that Willard Uphaus, defendant, recover from Louis C. Wyman, Attorney General One Hundred Dollars (\$100) for his costs herein expended.

It Is Further Ordered that this cause be, and the same is hereby, remanded to the Supreme Court of New Hampshire for consideration in light of *Sweezy v. New Hampshire*, 354 U. S. 234.

October 14, 1957.

And the same is hereby remanded to you, the said judges of the said Supreme Court of the State of New Hampshire, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the Nineteenth day of November, in the year of our Lord one thousand nine hundred and fifty-seven.

Costs of Willard Uphaus

Clerk \$100.00

Printing Record

\$100.00

John T. Fey, Clerk of the Supreme Court of the United States, by R. J. Blanchard, Deputy.

[fol. 105]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

No. 4533—October Session 1957

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

MEMORANDUM ON BEHALF OF PETITIONER—October 16, 1957

Remand of the United States Supreme Court of October 14, 1957, "... for consideration in the light of *Sweezy v. New Hampshire*, 354 U.S. 234" again indicates that the record in the principal case had never been examined by the High Court.

On June 24, 1957, Willard Uphaus moved for rehearing before this Honorable Court, specifically asserting that the decision in *Sweezy v. New Hampshire* required a different result. This Motion for Rehearing was denied *per curiam* on July 9, 1957.

Nothing in *Sweezy v. New Hampshire* 354 U.S. 234, is decisive of the issues in the principal case unless this case can be construed as extending *Pennsylvania v. Nelson*, 350 U.S. 497, to prohibit also State proscription of subversion directed against the State itself. Such a holding has not been made in the decision in *Sweezy v. New Hampshire*, 354 U.S. 234, directly nor by implication, nor is such an inference justified from dicta therein. This Honorable Court has specifically held that State statutes were not invalidated by *Pennsylvania v. Nelson*, in *Kahn v. Wyman*, 100 N.H. 245, where it was said:

"If state investigation of subversive activities is to be prohibited, a declaration to that effect must come from higher authority than this Court. We know of no decision of any court which has ruled that the investigative aspects of state subversive activities legislation have been pre-empted by the federal government."

[fol. 106] It is respectfully requested that this Honorable Court again re-affirm its original decision in this case and so advise the Clerk of the United States Supreme Court. In this manner any decision that a Sovereign State in the United States may not make it a crime to advocate or teach the necessity or propriety of the overthrow of the State government by force and violence if necessary will come, if it must, from a Federal and not a State Supreme Court. The legislative power to investigate has never been preempted. Such a holding being of vital fundamental derogation to Federal-State relations, involving a denial of reserved states' rights, and contrary to the plain meaning of the Tenth Amendment to the United States Constitution, it should never be made by the Supreme Court of a Sovereign State.

The Remand here does not vacate the entire proceedings but solely the judgment of this Honorable Court and this only until there has taken place such "consideration" as this Court feels required by the Remand itself. Interpretation giving to the Remand any broader scope would counter Rules 15 and 16 (4) of the United States Supreme Court, wherein certainly an "appropriate order" would not extend to vacation of all State Court proceedings without an opportunity to be heard.

The only procedural step taken in the United States Supreme Court prior to the issuance of the order to which this Memorandum is addressed was the filing of a jurisdictional statement on behalf of Uphaus, which jurisdiction was not opposed by petitioner in view of the desirability and need for clarification of the meaning and scope of the decision in *Sweezy v. New Hampshire*, 354 U.S. 234. Briefs on the merits of the principal case have never been filed with the United States Supreme Court nor has there been any oral argument on the merits of the case.

[fol. 107] The position of petitioner is that the disposition of the Remand warranted by the present state of the record should be:

"This case has again been reconsidered in light of *Sweezy v. New Hampshire*, 354 U.S. 234, pursuant to the order of the United States Supreme Court of

October 14, 1957, as it was previously reconsidered upon petition of respondent Uphaus submitted June 24, 1957, and denied July 9, 1957. Original decision re-affirmed."

Should further consideration of the Remand require oral argument, petitioner respectfully requests permission to be heard orally in connection therewith.

Respectfully,

/s/ Louis C. Wyman, Attorney General.

October 16, 1957

I hereby certify that I have this date mailed to Attorney Hugh. Bownes at his office in Laconia, New Hampshire, a copy of the foregoing Memorandum.

/s/ Louis C. Wyman.

[fol. 108]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

REPLY TO ATTORNEY GENERAL'S MEMORANDUM—

Filed October 23, 1957

The Court's attention is respectfully called to Rule 59 of the United States Supreme Court:

"Mandates shall issue as of course after the expiration of twenty-five days from the day judgment is entered."

In the light of the above rule, the Attorney General's Memorandum would seem to be premature and addressed to the wrong Court.

Since, however, the Memorandum has been filed, we would like to make the following observations:

1. Contrary to the Attorney General's assertion, the record in this case has been considered by the United States Supreme Court because a copy of the record was filed pursuant to the United States Supreme Court rules, and we must assume that the United States Supreme Court considered the record carefully.

2. In disposing of this case summarily, the United States Supreme Court has followed an old and established practice of disposing summarily of a case on the merits without oral argument or filing of briefs. This practice is pursuant to the broad statutory powers given to the United States Supreme Court under Section 2106 of Chapter 28 of the United States Code.

We also draw the Court's attention to the fact that at the same time that the United States Supreme Court disposed of the Uphaus case in this manner, it also disposed of a number of other matters in identical fashion.

3. In granting this summary relief, the United States Supreme Court followed the suggestion in the Jurisdictional Statement filed by us that this matter could be disposed of under the decision in the *Sweezy* case without the necessity of considering the other issues that were raised.

[fol. 109] 4. The order of the United States Supreme Court in respect to cases before it is invariably rendered with respect to the judgment of the Court below, and the fact that the United States Supreme Court did not vacate the entire proceedings in the State Courts does not render its decision any less binding on this Court.

5. It is clear that the United States Supreme Court considered the case on the merits and its decision is that the doctrine of the *Sweezy* case disposes of the matter finally and conclusively.

We respectfully request, therefore, that at the proper time the case be remanded to the Superior Court for the County of Merrimack, so that appropriate action can be taken for the return of bail, awarding of costs and rendering of a judgment of acquittal.

We are enclosing herewith a copy of Jurisdictional Statement that was filed in the United States Supreme Court.

Respectfully submitted,

/s/ Hugh H. Bownes, for Nighswander, Lord & Bownes, Attorneys for Willard Uphaus.

[fol. 110]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

Merrimaack, No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

Motion, for reinstatement of judgment. After the opinion in *Wyman v. Uphaus*, 100 N. H. 436 was filed, the defendant sought review by the Supreme Court of the United States. By order dated October 14, 1957, that court vacated the judgment of this court and remanded the case "for consideration in the light of *Sweezy v. New Hampshire*, 354 U. S. 234." *Uphaus v. Wyman*, 26 LW 3115. The plaintiff thereupon moved that the former judgment of this court be reinstated.

Louis C. Wyman, Attorney General, *pro se*, for the motion.

Nighswander, Lord & Bownes for the defendant, opposed.

OPINION—November 15, 1957

Per Curiam. In *Sweezy v. New Hampshire*, 354 U. S. 234, less than a majority of the Supreme Court of the United States was of the opinion that "use of the contempt power,

notwithstanding the interference with constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment" because of "a separation of the power of [the] legislature to conduct investigations from the responsibility to direct the use of that power." [fol. 111] However the judgment of this court was there reversed because other members of the court sufficient to make a majority were of the opinion that there should be reversal for other reasons which appear to us inapplicable to the facts presented by the case now pending. We therefore conclude that *Sweezy v. New Hampshire* is inconclusive of the issues in the pending case.

It is difficult to determine from the several opinions in *Sweezy v. New Hampshire*, *supra*, the full implication of the decision of that case. However, it appears to rest substantially on the ground that our Legislature did not desire an answer to the questions asked the defendant Uphaus by the Attorney General. With due deference we are compelled to state that this concept is erroneous. The legislative history makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions. Laws 1957, c. 347, approved July 11, 1957. We believe that the Legislature was entitled to the information sought. How this error on the part of the Supreme Court may have affected its opinions we do not know.

We are loath to believe that under the Federal Constitution a state does not have the right to protect itself against subversion by inquiry of the sort provided for by our Legislature. The implications of such a conclusion are so grave and so at variance with what we have considered to be the settled law that we feel any ruling to this effect must come from another tribunal than ours.

Prior to the order of the United States Supreme Court, the defendant herein moved for a rehearing in reliance upon *Sweezy v. New Hampshire*, *supra*, which motion was denied on July 9, 1957. We have again reconsidered our [fol. 112] opinion in the light of the Supreme Court's decision in the *Sweezy* case and we adhere to our original ruling in *Wyman v. Upkaus*, *supra*. The order is—

Former result affirmed; case remanded.

DUNCAN, J., dissented to the extent and for the reasons indicated in his former dissenting opinion reported in *Wyman v. Uphaus*, 100 N. H. 448-451, but otherwise concurred.

[fol. 113]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

JUDGMENT—November 15, 1957

In the case of No. 4533 *Wyman v. Uphaus* the court upon November 15, 1957, made the following order:

Former result affirmed; case remanded.

Concord, November 15, 1957

By order of the Court:

George O. Shovan, Clerk.

[fol. 118]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—December 17, 1957, Filed January 2, 1958

1. Notice is hereby given that Willard Uphaus, the above named respondent, hereby appeals to the Supreme Court of the United States from this Court's order reinstating and affirming the final judgment of this Court which overruled his exceptions to the decree of the Superior Court of Merrimack County, State of New Hampshire adjudging

him to be in contempt of the Superior Court in and for said county of Merrimack, and ordering him committed in the County Jail, there to remain until purged of said contempt and directed that "upon remand the Trial Court may exercise its discretion with respect to the entry of an order to enforce the command of a subpoena for production of correspondence." The said order-reinstating and affirming the said judgment was made and entered on November 15, 1957.

This appeal is taken pursuant to 28 U.S.C., §1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

- [fol. 119] (1) Mandate of the United States Supreme Court dated November 19, 1957.
- (2) Memorandum filed on behalf of the Attorney General dated October 16, 1957.
- (3) Respondent's reply to the Attorney General's memorandum, filed October 23, 1957.
- (4) Opinion of the New Hampshire Supreme Court of November 15, 1957.
- (5) Order of the New Hampshire Supreme Court dated November 15, 1957 affirming former result. 7
- (6) This Amended Notice of Appeal.

III. The following questions are presented by this appeal:

- (1) Whether Chapter 307, New Hampshire Laws of 1953, extended by Chapter 197, New Hampshire Laws of 1955, which the New Hampshire Supreme Court has construed to require the delivery to the Attorney General of lists of appellant's guests at the New Hampshire World Fellowship Center and to require the delivery of the appellant's correspondence with speakers at the said center, under penalty of indefinite confinement:

(a) Violates appellant's rights of free speech and association under the First and Fourteenth Amendments to the Constitution of the United States.

(b) Is an unreasonable search and seizure in violation of appellant's right to due process under the Fourth and Fourteenth Amendments.

(c) Is so vague and indefinite that it deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 120] (d) Is arbitrary and unreasonable and thereby deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(2) Whether Chapter 307, New Hampshire Laws of 1953, as extended, which the New Hampshire Supreme Court has construed as above set forth, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government and with respect to which the Federal Government has already legislated to the exclusion of state legislation.

(3) Whether the reliance by the Supreme Court of New Hampshire upon so called "subversive lists" compiled by the Attorney General of the United States and the Committee on Un-American Activities of the House of Representatives and upon the appellant's exercise before the said Committee of his constitutional privilege against self-incrimination, is arbitrary and unreasonable, violates his rights of free speech, assembly and association and deprives him of his privileges and immunities—all under the Fourteenth Amendment to the United States Constitution.

(4) Whether the reliance by the Supreme Court of New Hampshire on appellant's assertion before the Committee on Un-American Activities of the House of Representatives deprives him of his right under the Fifth Amendment to the Constitution of the United States not to be a witness against himself.

(5) Whether Chapter 307, New Hampshire Laws of 1953, as extended, which the New Hampshire Supreme Court has construed and applied as set forth above, constitutes a bill of attainder in violation of Article 1, §9 of the Constitution of the United States.

[fol. 121] (6) Whether the sentence of the New Hampshire Supreme Court, committing the defendant to imprisonment until he answer the questions put to him, constitutes cruel and unusual punishment within the Eighth and Fourteenth Amendments to the Constitution of the United States.

Dated, December 17, 1957.

/s/ Royal W. France, 154 Nassau Street, New York, New York; /s/ Hugh H. Bownes, Nighswander, Lord & Bownes, Laconia Savings Bank Building, Laconia, New Hampshire; /s/ Leonard B. Boudin, Rabinowitz & Boudin, 25 Broad Street, New York 4, New York, Attorneys for Appellant.

To: Louis C. Wyman, Esq., Attorney General, State of New Hampshire, Concord, New Hampshire.

Certificate of Service (omitted in printing).

[fol. 122]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

No. 4533

LOUIS C. WYMAN, Attorney General,

v.

WILLARD UPHAUS.

STIPULATION AS TO RECORD—January 20, 1958

The parties to the above-entitled cause hereby stipulate that the following portions of the record should be included in the transcript transmitted to the Supreme Court:

1. Mandate of the United States Supreme Court reciting decision of October 14, 1957 and dated November 19, 1957.
2. Memorandum filed on behalf of the Attorney General dated October 16, 1957.
3. Respondent's reply to the Attorney General's Memorandum, filed October 23, 1957.
4. Opinion of the New Hampshire Supreme Court of November 15, 1957 on remand with order.
5. Order of the New Hampshire Supreme Court dated November 15, 1957.
6. Notice of Appeal dated December 10, 1957.
7. Amended Notice of Appeal dated December 17, 1957.

Dated: January 20, 1958.

/s/ Hugh H. Bownes, Attorney for Appellant.

/s/ Louis C. Wyman, Attorney for Appellee.

[fol. 123]

SUPREME COURT OF THE UNITED STATES

No. 778, October Term, 1957

WILLARD UPHAM, Appellant,

v.

LOUIS C. WYMAN, Attorney General, State of
New Hampshire.

ORDER NOTING PROBABLE JURISDICTION—April 7, 1958

Appeal from the Supreme Court of the State of New Hampshire.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 124]

SUPREME COURT OF THE UNITED STATES

No. 778, October Term, 1957

[Title omitted]

~~ORDER GRANTING MOTION FOR LEAVE TO USE THE CERTIFIED
RECORD, ETC.—May 26, 1958~~

On Consideration of the motion for leave to use the certified record in case No. 332, October Term, 1957, as a part of the record in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. ~~123~~ 34

WILLARD UPHAUS,

Appellant,

LOUIS C. WYMAN, Attorney General,
State of New Hampshire,

Appellee.

On Appeal From the Supreme Court of New Hampshire

JURISDICTIONAL STATEMENT

ROYAL W. FRANCE,

154 Nassau Street,

New York 4, N. Y.

HUGH H. BOWNES,

Laconia, New Hampshire,

Attorneys for Appellant.

LEONARD B. BOUDIN,

RABINOWITZ AND BOUDIN,

25 Broad Street,

New York 4, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

WILLARD UPHAUS,

Appellant,

v.

**LOUIS C. WYMAN, Attorney General,
State of New Hampshire,**

Appellee.

On Appeal From the Supreme Court of New Hampshire

JURISDICTIONAL STATEMENT

Appellant, Willard Uphaus, appeals from the order of the Supreme Court of New Hampshire, entered on November 15, 1957, affirming and reinstating the final judgment of the said court, entered on February 28, 1957 and vacated by this Court on October 14, 1957, 355 U. S. 16. The said final judgment of the state court had sustained a lower court judgment of contempt sentencing appellant to indefinite imprisonment for refusing to turn over to appellee a list of guests at a summer camp, and directed him to turn over to appellee his private correspondence with and concerning guest lecturers at the camp.

Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

Opinions Below

The first opinion of the Supreme Court of New Hampshire was rendered on February 28, 1957 (*infra* p. 17) and modified upon a motion for rehearing on March 27, 1957, *infra* p. 34. As modified, the opinion is reported at 100 N. H. 436, 130 Atl. 278.

Following this Court's *per curiam* opinion at 355 U. S. 16, the Supreme Court of New Hampshire rendered an opinion on November 15, 1957, *infra* p. 15.

An earlier motion for rehearing in the state Supreme Court had been denied on July 9, 1957, without opinion. There was no opinion in the Superior Court of the state.

Jurisdiction

This proceeding was brought by appellee, Louis C. Wyman, Attorney General of the State of New Hampshire, in the Superior Court for Merrimack County, New Hampshire, pursuant to the Revised Laws of New Hampshire (1942) Chapter 307, §§ 18 and 19 (now RSA 491, §§ 19 and 20). Its purpose was to compel appellant to comply with certain subpoenas *duces tecum* issued by appellee in the course of an investigation conducted by him under a "Joint Resolution Relating to the Investigation of Subversive Activities," New Hampshire Laws of 1953, Chapter 307,¹ which delegated to the Attorney General power to investigate violations of the Subversive Activities Act of 1951, New Hampshire Laws of 1951, Chapter 193, and NHRSA, Ch. 588² and "to determine whether subversive persons as defined in said Act are presently located within this state."

¹ As extended, New Hampshire Laws of 1955, Chapter 197.

² New Hampshire Revised Statutes Annotated, Chapter 588.

The statutes are set forth in full in the jurisdictional statement in *Uphaus v. Wyman*, Oct. Term 1957, No. 332, pages 33-45, to which this Court is respectfully referred. The sections most significant in the light of this Court's opinion in *Sweezy v. State of New Hampshire*, 354 U. S. 234, are set forth in the Appendix (*infra*, pp. 34-36).

After hearing, the Superior Court ordered appellant to produce his guest lists and, upon his refusal, adjudged him in contempt of court and ordered him committed to the County Jail until purged of contempt (R. 2, 68).³ The Court reserved and transferred to the state Supreme Court without ruling the issue of appellant's duty to produce correspondence with or concerning guest speakers at appellant's camp (R. 1).

Appellant excepted to the Superior Court's adverse rulings and appealed to the state Supreme Court. On February 28, 1957 that Court overruled appellant's exceptions, affirmed the judgment of contempt of the Superior Court and ordered appellant to produce the aforesaid correspondence (*infra*, pp. 17-33).

A timely motion for rehearing was made and denied on March 27, 1957, the state Supreme Court, however, modifying the opinion previously rendered by it (*infra*, p. 34).

Notice of appeal to this Court was filed on April 26, 1957 with the state Supreme Court. Upon this Court's decision in *Sweezy v. State of New Hampshire*, 354 U. S. 234, a second motion for rehearing of this case was filed on June 25, 1957, calling the state court's attention to the *Sweezy* decision. This motion for rehearing was denied by the state court on July 9, 1957, without opinion, *infra*, p. 16.

³ "R" refers to the Reserved Case, constituting the record on appeal to the state Supreme Court under New Hampshire practice, which was filed upon the earlier appeal herein, *Uphaus v. Wyman*, No. 332, October Term, 1957, 355 U. S. 16.

Upon the appeal to this Court in *Uphaus v. Wyman*, No. 332, October Term, 1957, this Court entered an order, *per curiam* on October 14, 1957, 355 U. S. 16, vacating the state court's judgment with costs, and directing that the "case is remanded to the Supreme Court of New Hampshire for consideration in light of *Sweczy v. New Hampshire*, 354 U. S. 234."

Appellee then moved in the state Supreme Court for reinstatement and affirmance of its judgment of February 28, 1957. On November 15, 1957 the motion was granted and an order entered (*infra*, p. 37). Notice of appeal to this Court from the order was filed with the said state court on December 13, 1957; an amended Notice of Appeal was filed in the state court on January 2, 1958.

Jurisdiction of the appeal is conferred on this Court by 28 U. S. C. §§ 1257 (2) and 2101 (c). The following cases sustain the jurisdiction of this Court: *Uphaus v. Wyman*, 355 U. S. 16; *Hamilton v. Regents of the University of California*, 293 U. S. 245; *McCullum v. Board of Education*, 333 U. S. 203; *Wieman v. Updegraff*, 344 U. S. 183; *Garner v. Los Angeles Board*, 341 U. S. 716; *Slochower v. Board of Higher Education*, 350 U. S. 551, rehearing denied, 351 U. S. 944.

Statutes Involved

The validity of the "Joint Resolution Relating to the Investigation of Subversive Activities", New Hampshire Laws, 1953, Chapter 307, as extended, Laws, 1955, Chapter 197, and of the Subversive Activities Act of 1951, New Hampshire Laws of 1951, Chapter 193, NHRSA, Chapter 588, is involved, *infra*, pp. 34-36.

Questions Presented

(1) Whether Chapter 307, New Hampshire Laws of 1953, extended by Chapter 197, New Hampshire Laws of 1955, as construed to require the delivery to the Attorney

General as agent of the state legislature of lists of appellant's guests at the New Hampshire World Fellowship Center and to require the delivery of the appellant's correspondence with speakers at the said center, under penalty of indefinite confinement:

(a) Violates appellant's rights of free speech and association under the First and Fourteenth Amendments to the Constitution of the United States.

(b) Is an unreasonable search, and seizure in violation of appellant's right to due process under the Fourth and Fourteenth Amendments.

(c) Is so vague and indefinite that it deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(d) Is arbitrary and unreasonable and thereby deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(2) Whether Chapter 307, New Hampshire Laws of 1953, as extended, construed as above set forth, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government and with respect to which the Federal Government has already legislated to the exclusion of the state legislation.

(3) Whether the reliance by the Supreme Court of New Hampshire upon so called "subversive lists" compiled by the Attorney General of the United States and the Committee on Un-American Activities of the House of Representatives is arbitrary and unreasonable, violates his rights of free speech, assembly and association and deprives him of his privileges and immunities—all under the Fourteenth Amendment to the United States Constitution.

(4) Whether Chapter 307, New Hampshire Laws of 1953, as extended, construed and applied as set forth above, constitutes a bill of attainder in violation of Article I, § 9 of the Constitution of the United States.

(5) Whether the sentence of the New Hampshire Supreme Court, committing the defendant to imprisonment until he answer the questions put to him, constitutes cruel and unusual punishment within the Eighth and Fourteenth Amendments to the Constitution of the United States.

Statement of the Case

Appellant, Willard Uphaus, is the Executive Director of World Fellowship Inc. a charitable corporation organized under New Hampshire law, which operates a summer camp in that state. It is "a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose" (*infra*, p. 18).

World Fellowship maintains accommodations for the public and it makes available to them guest lectures on topics of contemporary interest. As appellant testified: "Generally they fitted into a program and came to speak on questions that I had suggested; or if they were celebrated ministers or lawyers, they just talked of their life's experiences. They talked sometimes without a closely expressed topic. Sometimes they just sat down for an evening around the fire and expressed their—told stories of their lives, their interest and their problems" (R. 41, 442).

In 1953, appellee began his investigation under the "Joint Resolution Relating to the Investigation of Subversive Activities." See *Sweezy v. New Hampshire*, 354

U. S. 234. Appellant was one of the persons subpoenaed and interrogated by appellee—because he and some of his guest speakers were connected with organizations described as subversive by the United States Attorney General and by the House Committee on Un-American Activities (R. 31, 40, 51, 52).

Appellant answered all questions concerning his own associations denying, *inter alia* that he had ever been a Communist (R. 16) or knew anyone to be a Communist (R. 56) or that the forcible overthrow of government had ever been advocated at the camp (R. 37). He declined, however to produce pursuant to subpoenas *duces tecum* the names of guests at the camp, the names of its non-administrative employees such as cooks and ground-keepers and his private correspondence with or concerning the guest lecturers.

Thereupon, appellee filed a petition with the Superior Court of Merrimack County, New Hampshire to compel the production of this information. Such a petition, under New Hampshire practice, leads to a judicial hearing, independent of the administrative one before the Attorney General, in which the witness is again questioned and the Court after ruling upon pertinence and privilege may direct compliance and enforce its order by the contempt power (see R. 7, 9).

Appellant was called as a witness by appellee and again testified freely with respect to his own associations (Appendix, R. 16, 56, 67). He declined to produce the guest lists and private correspondence, relying upon his rights under the federal constitution. He raised the foregoing federal issues in the Superior Court in a manner set forth in detail in the original jurisdictional statement in No. 332 (pp. 7-10).

The Superior Court overruled appellant's objections (R. 54), denied his motion to dismiss the proceedings and directed him to produce the guest list (R. 39, 67). Upon

his refusal, appellant was adjudged in contempt of court and sentenced to imprisonment until he should purge himself of contempt (R. 2, 68).

The Superior Court ruled that appellant was not required to produce the names of his non-administrative employees (R. 39, 49). It did not rule upon appellant's duty to produce his personal correspondence with and concerning the guest lecturers. It transferred that matter, without ruling to the Supreme Court of New Hampshire (R. 1, 53, 67).

Upon exceptions duly filed, the case was heard on appeal in the Supreme Court of New Hampshire. In that court, appellant again raised the federal constitutional issues in the manner described in the original jurisdictional statement.

The New Hampshire Supreme Court resolved the issues against appellant in its opinion of February 28, 1957 (*infra*, pp. 17-33). It relied repeatedly upon its earlier decision in *Wyman v. Sweezy*, 100 N. H. 103, later reversed by this Court in *Sweezy v. State of New Hampshire*, *supra*.

The state Supreme Court ruled directly against appellant in his attack upon the Attorney General's claim of authority from the legislature and in appellant's assertion of his rights under the First Amendment (*infra*, p. 28)—the two matters upon which this Court ruled in *Sweezy*, *supra*.

The state Supreme Court held that this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497 did not render invalid the subpoenas *duces tecum* served upon appellant, noting that the same contentions were advanced before it without success in the *Sweezy* case (*infra*, p. 20). It disregarded appellant's arguments of lack of pertinency, again upon the basis of its decision in *Sweezy*. In this connection it relied upon the fact that appellant and some of the guest speakers were members of organizations on the United States Attorney General's list (*infra*, pp. 23, 27-28).

An appeal was taken to this Court and a jurisdictional statement was filed pursuant to its Rules. Appellant set forth in detail the reasons why in his view there were substantial federal questions and suggested that there be a summary reversal on the authority of the *Sweezy* case. No motion to dismiss or affirm was made by appellee. As indicated, *supra*, p. 4, this Court vacated the judgment below, remanding the cause to the State Court. That Court, one Judge dissenting in part, rendered the decision herein appealed from, which concluded with the following statement:

"We have again reconsidered our opinion in the light of the Supreme Court's decision in the *Sweezy* case and we adhere to our original ruling in *Wyman v. Uphaus, supra*" (*infra*, p. 16).

The Questions Are Substantial

The original jurisdictional statement in No. 332, October Term, 1957, sets forth the substantial federal questions created by the state court's judgment, which, as reinstated, is the subject of this appeal. We respectfully refer this Court to that statement (pp. 10-14).

The state court's opinion of November 15, 1957, reinstating the judgment, sufficiently establishes that substantial federal questions are involved herein (*infra*, pp. 15-16).

1. Thus, the state court begins by noting that one of the two grounds of the decision in the *Sweezy* case—the vagueness of the statutes—was supported by four justices of this Court rather than by a majority. This is not the occasion for a discussion of whether a state court may disregard opinions in this Court for the reason given.⁴ The

⁴ Curiously, the appellee in *Wyman* sought rehearing here on the ground that the vagueness point was decided by "the majority of four members of this Honorable Court". (*Sweezy v. New Hampshire*, Oct. Term, 1956, No. 175; Petition for Rehearing, pp. 1, 3).

opinion of four members of the Court necessarily attests to the existence of substantial federal issues requiring adjudication here.

2. The state court then asserts that "the other reasons" which were joined in by six members of this Court "appear to us inapplicable to the facts presented by the case now pending" (*infra*, p. 16). These "other reasons" were the state's interference with what the Chief Justice described as "petitioner's liberties in the areas of academic freedom and political expression." * * * *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250. This is made explicit by the concurring opinion of Mr. Justice Frankfurter whom Mr. Justice Harlan joined, striking a balance between "two contending principles—the right of a citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection" (*Id.* at 266-7).

The state court's most recent opinion fails to distinguish this case from *Sweezy*. Nor did the Attorney General's memorandum below on his motion to affirm the prior judgment suggest any distinction between the two cases.⁵

The investigations of appellant and of Dr. Sweezy were of the same character, for the same purposes, and made pursuant to the same statutes. Both witnesses denied membership at any time in the Communist Party.⁶ In neither is there evidence of "a countervailing interest of the State" (*Id.* at 265) or circumstances wherein a state interest would justify infringement of the right to engage in political expression and association (*Id.* at 251).

⁵ This memorandum appears in the transcript, pp. 4-6, filed with this Jurisdictional Statement.

⁶ We do not suggest, of course, that a refusal to answer questions concerning Communist Party membership would have been unprotected by the Constitution.

Indeed, appellant's position is stronger in some respects than that of Dr. Sweezy. Thus, while the state court was unanimous in *Sweezy*, two of its judges dissented in part from the decision in appellant's case stating *inter alia*:

"The order of the Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution. *Wyman v. Sweezy*, *supra*, 113. See *Edgerton*, dissenting, *Barsky v. United States*, 167 F. (2d) 241, 254. Constitutional rights of the guests as well as of the witness are involved, and the Court need not restrict itself to consideration of the rights of the witness alone. See *Barrows v. Judson*, 346 U. S. 249; *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U. S. 123, 187; Comment: Inquiry Into Political Activity, 65 Yale L. J. 1159, 1183-1189. The role of the guests with respect to the subject matter was not essentially different from that of the purchasers of pamphlets pertaining to national issues in the *Rumely* case *supra*. On a record such as this so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment." *Rumely v. United States*, 197 F. (2d) 166, 172. See also, *United States v. Rumely*, 345 U. S. 41, 46" (*infra*, p. 33).

The appellee's petition for rehearing of this Court's decision in the *Sweezy* case likewise shows that such differences as there are between the two cases might well be resolved in favor of appellant herein. Thus the appellee states that in *Sweezy* (a) the state was concerned with subversion "at a state supported institution" (p. 4), (b) the inquiry concerning Dr. Sweezy's lecture "does not concern other individuals" (*id. ibid.*), (c) the witness was asked "pertinent and relevant questions" (*ibid.*). The partial dissent below is an indication of the strength of Dr. Uphaus' case upon each of these points.

Finally, the state court in its opinion of November 1957 expresses its disagreement with this Court's decision in *Sweezy* and states:

"It is difficult to determine from the several opinions in *Sweezy v. New Hampshire*, *supra*, the full implication of the decision of that case. However, it appears to rest substantially on the ground that our Legislature did not desire an answer to the questions asked the defendant Uphaus by the Attorney General. With due deference we are compelled to state that this concept is erroneous. The legislative history makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions. Laws 1957, c. 347, approved July 11, 1957. We believe that the Legislature was entitled to the information sought. How the error on the part of the Supreme Court may have affected its opinions we do not know.

We are loath to believe that under the Federal Constitution a state does not have the right to protect itself against subversion by inquiry of the sort provided for by our Legislature. The implications of such a conclusion are so grave and so at variance with what we have considered to be the settled law that we feel any ruling to this effect must come from another tribunal than ours" (*infra*, p. 16).

The statements are hardly an accurate statement of the "full implication" of this Court's opinion in *Sweezy*. Nor do we readily perceive how one legislature's action in 1957 can illuminate its predecessor's intention. This Court disregarded the same point made by appellee in his petition for rehearing in the *Sweezy* case.

It is premature to discuss these and other errors in the state court's most recent opinion. Under the circumstances we must adopt its suggestion that "another tribunal than ours" must act to determine the respective rights of state and citizen "under the Federal Constitution" (*infra*, p. 16). Its decision upon the federal issues involved is enough to establish this Court's jurisdiction.

Argument upon the merits is reserved for a proper occasion. We indicated upon the prior appeal that this Court might prefer to dispose of the case by summary reversal

(No. 332, Oct. Term, Juris. Stat. p. 4).. Instead this Court deemed it appropriate merely to vacate the judgment below and to remand the case. The state Court's response to this Court's action now makes it necessary for the case to be disposed of upon the merits.

We respectfully suggest that one of the following procedures would be appropriate:

(a) This Court's summary vacatur of the order below and its dismissal of the contempt proceedings;

(b) The placing of this cause upon the calendar for disposition this Term.

In any event, the history of the case and the continuing effect of appellee's action upon appellant and others in New Hampshire make desirable the early consideration and determination of this appeal:

Dated, February 9, 1958.

Respectfully submitted,

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Appendix

Opinion of Supreme Court of New Hampshire

Merrimack

No. 4533.

 LOUIS C. WYMAN, *Attorney General*,

v.

WILLARD UPHAUS.

 November 15, 1957.

MOTION, for reinstatement of judgment. After the opinion in *Wyman v. Uphaus*, 100 N. H. 436 was filed, the defendant sought review by the Supreme Court of the United States. By order dated October 14, 1957, that court vacated the judgment of this court and remanded the case "for consideration in the light of *Sweezy v. New Hampshire*, 354 U. S. 234." *Uphaus v. Wyman*, 26 LW 3115. The plaintiff thereupon moved that the former judgment of this court be reinstated.

LOUIS C. WYMAN, Attorney General, *pro se*, for the motion.

NIGHTSWANDER, LORD & BOWNES for the defendant, opposed.

PER CURIAM. In *Sweezy v. New Hampshire*, 354 U. S. 234, less than a majority of the Supreme Court of the United States was of the opinion that "use of the contempt power, notwithstanding the interference with constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment" because of "a separation of the power of [the] legislature to conduct investigations from the responsibility to direct the use of that power." However the judgment of this court was there reversed because other members of the court sufficient to make a majority were of the opinion that there should be

reversal for other reasons which appear to us inapplicable to the facts presented by the case now pending. We therefore conclude that *Sweezy v. New Hampshire* is inconclusive of the issues in the pending case.

It is difficult to determine from the several opinions in *Sweezy v. New Hampshire, supra*, the full implication of the decision of that case. However, it appears to rest substantially on the ground that our Legislature did not desire an answer to the questions asked the defendant Uphaus by the Attorney General. With due deference we are compelled to state that this concept is erroneous. The legislative history makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions. Laws 1957, c. 347, approved July 11, 1957. We believe that the Legislature was entitled to the information sought. How this error on the part of the Supreme Court may have affected its opinions we do not know.

We are loath to believe that under the Federal Constitution a state does not have the right to protect itself against subversion by inquiry of the sort provided for by our Legislature. The implications of such a conclusion are so grave and so at variance with what we have considered to be the settled law that we feel any ruling to this effect may come from another tribunal than ours.

Prior to the order of the United States Supreme Court, the defendant herein moved for a rehearing in reliance upon *Sweezy v. New Hampshire, supra*, which motion was denied on July 9, 1957. We have again reconsidered our opinion in the light of the Supreme Court's decision in the *Sweezy* case and we adhere to our original ruling in *Wyman v. Uphaus, supra*. The order is

*Former result affirmed;
case remanded.*

DUNCAN, J., dissented to the extent and for the reasons indicated in his former dissenting opinion reported in *Wyman v. Uphaus*, 100 N. H. 448-451, but otherwise concurred.

Opinion of Supreme Court of New Hampshire

Merrimack,
No. 4533.

LOUIS C. WYMAN, *Attorney General*

v.

WILLARD UPHAUS.

Argued December 4, 1956.

Decided February 28, 1957.

PETITION, by the Attorney General under R. S. A. 491:19, 20, for an order to compel compliance by the defendant with two subpoenas *duces tecum* served upon him in the course of a legislative investigation of subversive activities conducted by the Attorney General pursuant to resolutions appearing in Laws 1953, c. 307, and Laws 1955, c. 197.

A similar petition was previously dismissed for want of personal service upon the defendant within the jurisdiction. *State v. Uphaus*, 100 N. H. 1. Such service now having been had, the Attorney General seeks to compel compliance with a summons issued for the taking of evidence by him on August 31, 1955, as well as with the summons issued for the witness' appearance before him on September 27, 1954. See *State v. Uphaus*, *supra*, 3. By the subpoenas in question the petitioner sought to require the witness to produce guest registrations at the New Hampshire World Fellowship Center at Albany, New Hampshire for the 1954 and 1955 seasons; to disclose the names of employees at the Center for the same seasons; and to produce "all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics" at the Center during those seasons. Trial by the Court (*Grant, J.*).

Over the objection of the defendant and subject to his exception, he was ordered to produce the guest registrations in question. His objection to disclosure of the names of employees was sustained; and the Court transferred without ruling the question of whether he may properly be required to produce the correspondence in question. The defendant's exceptions to rulings made in the course of the hearing, including the denial of his motion to dismiss the petition, were likewise reserved and transferred. Upon the defendant's refusal to comply with the order for the production of guest registrations, he was found and adjudged in contempt and ordered committed until he should purge himself of his contempt. Pending transfer of his exceptions he was admitted to bail. Other facts are stated in the opinion.

LOUIS C. WYMAN, Attorney General (by brief and orally),
pro se.

ROYAL W. FRANCE (of New York) and NIGHSWANDER,
— LORD & BOWNES (MR. FRANCE and MR. BOWNES orally),
for the defendant.

PER CURIAM. New Hampshire World Fellowship Center, Inc. is a New Hampshire corporation which maintains accommodations for the public at Albany, New Hampshire, during the summer season. By means of a sign near the highway the public is invited to stop there at specified rates. The defendant, a native of Indiana and resident of New Haven, Connecticut, has been executive director of the Center since 1953. He described the Center thus: "The World Fellowship of Faiths is a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose."

In the course of interrogation by the Attorney General, both privately and before the Court, the defendant furnished the names of persons who spoke or conducted discussions at the Center in the course of the 1954 and 1955 seasons. Some twenty persons, all non-residents, were named by the witness as speakers in 1954, and over twenty-eight as speakers in 1955, a number of the latter being persons who had spoken in 1954. Information in the possession of the Attorney General concerning some of these persons and their connection with organizations or agencies considered to be communist-influenced or controlled, was contained in his report to the 1955 Legislature, which was before the Trial Court. Attorney General's Report on Subversive Activities, New Hampshire, 1955, pp. 136-156. Likewise, information concerning the defendant's connections with and support of similar organizations was before the Court in the same report. *Id.*, pp. 162-175.

The defendant in the course of the proceedings has placed no reliance upon the Fifth Amendment to the Constitution of the United States, or the Fifteenth Article of the New Hampshire Bill of Rights. He testified that he was not a Communist and never had been, and that none of the speakers at the Center, or its guests, were to his knowledge Communists, although he was aware of the connections held by many of them and frankly conceded his own activities in past years. He testified that at no time at the Center was there any advocacy of overthrow of the government by force or violence. A teacher by profession, and holding a Ph. D. degree in religious education from Yale, he described himself as a pacifist, and believer in a "form of Christian social society."

The witness testified that the Center could accommodate a maximum of sixty persons for a meal, and that the guest register for the 1954 season consisted of approximately three hundred sixty names and addresses, upon three by five cards, kept by him "in an office" in New Haven. He testified that the register for 1955, similarly kept, consisted

of about two hundred fifty names and addresses up to August 31, 1955, and "something over three hundred" for the summer. In refusing to produce the registrations, the witness characterized the inquiries of the Attorney General as an "attempt * * * to harass and intimidate me and to destroy the work of the World Fellowship of Faiths" and "a direct invasion of Christian conscience, and authority higher than that of the state." He refused upon the ground of conscience to give the names and addresses "of people who to my knowledge have never done anything to injure their country and who came to World Fellowship Center solely for vacation, recreation and friendly discussions" because to do so "would turn [him] into a contemptible informer" and he could not "involve innocent people in the Attorney General's network." Specifically he relied upon the First and Fourth Amendments to the Constitution of the United States and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

In this court, the defendant has relied upon the same constitutional provisions. He contends that the investigation is unconstitutional and invalid by reason of the decision of the United States Supreme Court in *Pennsylvania v. Nelson*, 350 U. S. 497. He further contends that the information sought by the petitioner has not been shown to be relevant or pertinent to the subject of the investigation, that information before the Trial Court was incompetent because hearsay, and that the order committing him until he should purge himself of his contempt is invalid because indefinite and constituting cruel and unusual punishment, Constitution of the United States, Amend. VIII.

I. We are confronted at the outset by the contention that the investigation is shown to be invalid by the decision of the United States Supreme Court in *Pennsylvania v. Nelson*, *supra*. The same contention was advanced without success on motion for rehearing in *Wyman v. Sweezy*, 100 N. H. 103 and was strongly urged in *Kahn v. Wyman*.

100 N. H. 245. In the latter case, after full consideration the opinion was expressed that *Pennsylvania v. Nelson*, *supra*, did not preclude conduct of the "investigation of subversive activities within the state as distinct from * * * the prosecution of crimes." See also, *State v. Raley* (Ohio), 136 N. E. (2d) 295, 307. We see no present reason to recede from the views previously expressed.

In this connection it may be of interest to note that courts of other jurisdictions which have thought it necessary because of the *Pennsylvania* decision, *supra*, to dismiss prosecutions charging offenses against the state as well as the federal government have done so with reservation of the possibility that some "kind of sedition [might be] directed so exclusively against the State as to fall outside the sweep of * * * *Pennsylvania v. Nelson*." *Commonwealth v. Gilbert* (Mass.), 134 N. E. (2d) 13, 16. See also, *Bradley v. Commonwealth* (Ky.), 291 S. W. 843, 849.

The circumstance that the usefulness of the investigation authorized by the resolutions of 1953 and 1955 has been diminished by the holding of the *Pennsylvania* case does not preclude continuance of the investigation for any purposes which may remain open. See 70 Harvard L. R. 95, 119, and footnote 148; Note, 34 Ind. L. J. 270, 281-5. The defendant's argument that the investigation is invalid cannot be adopted.

II. The witness Uphaus contends that the record fails to establish the relevancy of the evidence sought and ordered to be produced. It is fundamental that "the power exercised by a committee * * * must be within both the authority delegated to it and also within the competence of the [legislative body] to confer upon the committee." *United States v. Lamont*, 18 F. R. D. 27, *aff'd* 236 F. (2d) 312. Although as a result of *Pennsylvania v. Nelson*, *supra*, the State is without authority to prosecute offenses against the federal government, the power to investigate to determine "whether subversive persons as defined in said

[1951] act are presently located within this state" and whether "necessary legislation" should on that account be recommended (*Id.*) remains unimpaired. In this connection it may be well to observe that any questions of policy regarding this legislation are not for the court but belong exclusively to the Legislature and this distinction we are bound to respect. *Chronicle &c. Pub. Co. v. Attorney General*, 94 N. H. 148, 151. If through its legally authorized committee, the Attorney General (*Wyman v. Sweezy*, 100 N. H. 103, 105), the Legislature has asked for relevant information it is entitled to it. The test to determine whether the question is relevant is to inquire whether the "question is directed at a possible answer . . . which would be reasonably concerned with the main object of the investigation." *Wyman v. Sweezy*, *supra*, 106.

To establish relevancy in the case before us, the petitioner relied substantially upon the content of Uphaus' answer, and the information concerning him and speakers at the Center which is summarized in the report to the 1955 Legislature hereinbefore cited. The witness objected to the latter information as hearsay and incompetent. This objection has not been strongly urged before us and we have already rejected this argument in *Wyman v. Sweezy*, *supra*, decided since the hearings of the Attorney General in this case were held. The petitioner is clearly entitled to act upon "reasonable or reliable" information (Laws 1953, c. 307) which he may present to the Court, even though in hearsay form to establish the relevancy of his inquiry. *Wyman v. Sweezy*, *supra*, 111. As was observed in *United States v. Sacher*, 139 F. Supp. 855, 860, in considering a similar objection: "Obviously hearsay testimony . . . may sufficiently establish . . . pertinency of the questions here involved and the reasons for asking them."

The witness refuses to produce the guest registrations of World Fellowship, claiming in effect that they cannot possibly be reasonably concerned with "whether subversives are presently located within the state." Laws 1953,

307. In determining the worth of this objection it appears necessary to detail some of the information disclosed by the record as being in the Attorney General's possession and bearing on whether the question as to the guest cards was relevant, since the context in which a question is asked may "indicate its relevancy * * *." *Wyman v. Sweezy, supra*, 107.

It appears that the witness, while he does not claim its protection here, has pleaded the Fifth Amendment when questioned about Communist matters by a congressional committee. He was a supporter of numerous organizations on the subversive list prepared by the House committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities. He attended the Warsaw Congress, which he said he knew was "Soviet influenced," at the invitation of a man who he admittedly knew had an international reputation as an open Communist. At this Congress the United States was attacked for allegedly using germ warfare in Korea.

Not less than nineteen speakers invited by Uphaus to talk at World Fellowship had either been members of the Communist Party or had connections or affiliations with it or with one or more of the organizations cited as subversive or Communist controlled in the United States Attorney General's list. His attorney asserts that the witness is "not at all concerned about his associations." In this connection it may be noted that throughout the examination of Uphaus the latter dwelt at length on the high ideals of his organization and his love for and belief in freedom. It is not for this court to pass on the truth of these representations. The committee was at liberty unquestionably to believe the witness. On the other hand, it was equally free to decide that Lord Salisbury's famous dictum might be applicable: "If you will study history, you will find that freedom, when it has been destroyed, has always been destroyed by those who shelter themselves under the cover

of its forms, and who speak its language with unparalleled eloquence and vigor."

In many instances Uphaus knew that the speakers at World Fellowship were members of one or more organizations cited as subversive by the United States Attorney General, but he claimed he did not know whether they or such persons as Paul Robeson with whom at times he had had correspondence, were Communists. However this may be, we have already held that whether persons "were or were not in fact Communist Party members or subversive persons is not decisive on the issue of relevancy." *Wyman v. Sweezy, supra*, 112. The Attorney General did not have to prove them Communists or subversives before he asked questions which were directed at a possible answer which would be "reasonably concerned with a main object of the investigation. *Id.*, 112. It is equally true that the Attorney General was not required to prove that World Fellowship was a subversive organization before making inquiry concerning it. *Id.*, 112.

Literature was distributed at the World Fellowship Center, examples being such material as a pamphlet by Molotov on Soviet policy and another on American-Russian friendship, the opening line of which was "Back to Stalingrad." However, as Mr. Uphaus himself said, it made no difference to him whether his guests believed in Communism or not. "It depends on his conduct while he is there" whether he is permitted to remain. The witness admits that he has had correspondence with persons who have been reputed or alleged to be Communist Party members. He also concedes that he said "a grace" which contained the following words, "God bless the revolution," but he claims this referred to "any revolution." As previously noted, belief in his statement was not compelled. A book available at the Center entitled "World Fellowship of Faith," contained an article which after supporting Communism reads: "If any government stands in the way that government must be overthrown." And again, there was a

statement to the effect, "If any people stand in the way, that people must be destroyed; * * * we must banish God from the skies and capitalists from the earth." The witness denies that he subscribes to "everything" in this publication.

In the light of this information and in this setting, Up-haus maintains that the guest registrations of World Fellowship cannot possibly contain any information bearing on whether, at the time of the investigation, subversive persons were "located within this state." *Wyman v. Sweezy*, 100 N. H. 103, 106. We believe this contention so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Attorney General and the law applicable to the situation. Other authorities have reached the same conclusion in similar circumstances. See *Flaxer v. United States*, 235 F. (2d) 821; *Marshall v. United States*, 176 F. (2d) 473; *Morford v. United States*, 176 F. (2d) 54.

The case of *Rumley v. United States*, 197 F. (2d) 166, cert. denied, 334 U. S. 843, relied upon by the witness, so far from being an authority for his position, appears upon analysis to support the State's contention. In the *Rumley* case the investigation was concerned with lobbying and the question was whether a publisher of books must disclose the names of those who purchased them. The Court held that he did not have to and that the effort to influence public opinion upon national affairs was a protected freedom of speech which Congress could not abridge, "unless urgent necessity in the public interest require it to do so." *Id.*, 173. The opinion went on to assert that "on the contrary," Communism poses a threat to "the security of this country," and for that reason Congress had "the power and a duty to inquire into Communism and the Communists." *Id.*, p. 173, citing *Barsky v. United States*, 167 F. (2d) 241, cert. denied, 334 U. S. 843. (Emphasis ours.)

In passing it may be well to note in commenting on the stress which the *Rumley* case lays on the "urgent neces-

sity" of investigating Communist activities as balanced against the right to freedom of speech, which the witness contends is controlling here, that our Legislature, in common with the federal government and most other states, has found this necessity exists to a degree so urgent, and has given the reasons so cogently, that it seems unnecessary to revert to them again, even in the most summary fashion. It may also be worth considering that for many years guest registrations in public places such as World Fellowship have been open to inspection "at all times" by "the sheriff, or his deputies and to any police officer." RSA 353.3. So far as appears in this State, no one has ever questioned the validity of such a law until the Communist issue arose.

In conclusion, we believe that the Legislature through its lawfully authorized committee, the Attorney General, has demanded clearly relevant information. We hold it entitled to it. Accordingly, the order of the Superior Court requiring the witness to produce the guest registrations is sustained and his exception is overruled.

III. The Trial Court transferred without ruling the question of an order requiring the production of all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship Inc. during the 1954 and 1955 seasons." The petitioner made it apparent at the trial that the subpoenas were intended to require production of correspondence conducted during the specified years only.

The witness testified that in 1954 there was correspondence with some fifteen to twenty persons, and that correspondence was conducted in 1955 with certain specified speakers. He testified that there "was never," in any of the correspondence, "anything suggesting that they discuss the overthrow of government by force or violence, or any topics relating to the overthrow of government by force and violence, or that they discuss Marxism or Leninism."

He declined to produce the requested correspondence, relying upon the defense of irrelevancy, and of violation of the First, Fourth, and Fourteenth Amendments to the Constitution of the United States, and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

As was pointed out in *Wyman v. Sweezy, supra*, the legislative committee was not bound to accept the assurance of the witness that the correspondence in question contained nothing relevant. "The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of government was in fact advocated before it could inquire of him concerning the lecture." *Id.*, 108.

The defendant vigorously objects to use made of the list of organizations cited by the United States Attorney General as subversive or communist controlled. Reliance is placed by him upon various holdings of the courts, establishing that connection with organizations so listed is not proof of guilt of subversion. We recognize that such a listing of itself establishes neither the character of the organization nor of persons associated with it. *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U. S. 123, *supra*; *Barsky v. Board of Regents*, 347 U. S. 442, 456, 460. See also, *Wieman v. Updegraff*, 344 U. S. 183; *Schachtlin v. Dulles*, 225 F. (2d) 938, 943; *Lawson v. Housing Authority*, 270 Wis. 269; *Hughes v. Board*, 141 N. Y. S. (2d) 392.

The question under our statute is not whether the listing by the Attorney General, admittedly hearsay as used in these proceedings, is competent evidence upon which the rights of individuals to employment or housing may be made to depend, but whether it constitutes information which the legislative committee may consider so far "reasonable or reliable" as to warrant further inquiry concerning the persons affected. The information in the petitioner's possession, including the listing by the Attorney General of organizations with which the defendant and speakers at the Center had connections, could be found

sufficiently reasonable or reliable to warrant further inquiry concerning their relationship with each other and their activities at the Center.

The possibility that the correspondence which it is sought to have produced may yield no information tending to show subversive purposes is not determinative of the relevancy of the request for its production. As was pointed out in *United States v. Orman*, 207 F. (2d) 148, 154, 155, the question of relevancy turns upon the substance of the question, and the possibility that the answer may be relevant, rather than upon the actual character of the answer when obtained. "Although his answer might have proved that he was not [linked with unlawful activity] it was not his right to deny this knowledge to the Committee." *Id.*, 155. See also, *Wyman v. Sweezy*, *supra*, 106, 112. We conclude that an order for production of the correspondence would not be invalid upon the ground that inquiry concerning it could not be found relevant.

The question remains whether such an order would violate constitutional rights under the First Amendment to the United States Constitution, or under the Fourth Amendment guaranteeing the right to be secure against "unreasonable searches and seizures," the former of which at least becomes applicable to state action by reason of the Fourteenth Amendment (*Gitlow v. New York*, 286 U.S. 652, 666); or rights, under the state Constitution, "of Conscience" (Art. 4th), of religious freedom (Art. 5th), and "to be secure from all unreasonable searches and seizures" (Art. 19th). We are of the opinion that the order would not violate such rights as a matter of law. By public exposition of their views, the defendant and the speakers in question chose overtly to place their views in the public eye. As against the expressed public interest in learning the nature and purposes of these expositions, based upon reasonable ground for believing that they may have been subversive in character, the witness or the speakers may not now enshroud their purposes in a cloak

of the "freedom of silence." See 47 Mich. L. R. 181, 213-222. Their right is to be free from "unreasonable" searches and seizures; and disclosure of the contents of their correspondence, like disclosure of the content of the witness Sweezy's lecture, may be compellable in the interest of satisfying the public need for disclosure of circumstances reasonably thought to be concerned with the object of the legislative investigation. *Wyman v. Sweezy*, *supra*, 106-109.

It is not to be disputed that the right to be exempt from arbitrary disclosures of personal and private affairs has always been regarded as of great importance. *Sinclair v. United States*, 279 U. S. 283, 292. See also, *Boyd v. United States*, 616, 621-622. An order for the production of papers under a subpoena *duces tecum* may constitute an unreasonable search and seizure. *Hale v. Benkel*, 201 U. S. 43, 76. But one which requires the production of relevant documents in furtherance of an authorized investigation is not such a search and seizure. See *United States v. Orman*, 207 F. (2d) 148, 158. It is the "unjustifiable intrusion" which violates the Fourth Amendment. See BRANDEIS, J. dissenting, in *Olmstead v. United States*, 277 U. S. 438, 478-479.

The principal issue with respect to the order sought in this case is whether production of the correspondence is relevant (*United States v. Orman*, *supra*, 158), and within reasonable and definite limits. *Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 180, 196, 202-214. It might be thought that production of all correspondence requested, whether or not relating to proposed speaking engagements at the Center, would exceed the bounds of relevancy. On the other hand correspondence not directly concerned with such an engagement might be thought relevant to show the defendant's acquaintance with the speakers and their views and to shed light upon the probable nature of their discussions at the Center, some of which, according to the defend-

ant, consisted merely of telling "stories of their lives, their interests, and their problems." We therefore consider that an order to produce the correspondence specified by the subpoena could be found warranted by the record and would not be precluded as in violation of constitutional rights. *Barsky v. United States*, 167 F. (2d) 241; *United States v. Orman*, *supra*.

The atmosphere of religion which surrounds the defendant's activities does not necessarily insulate them from investigation. The petitioner voices a purpose "to show that the advocacy of this so-called peace crusade is for the purpose of achieving a quicker and a cheaper occupation by the Soviet Union and Communism." Only by investigation of these activities can it be determined whether their purpose is what the committee claims, or whether the organization of which the defendant is director is in fact "an organization the bona fide purpose of which is to promote world peace * * * through constitutional means" which the statute excludes from the definition of a "foreign subversive organization" (RSA 588:1), and which the defendant claims the World Fellowship Center to be.

The exception to denial of the motion to dismiss is overruled. Upon remand the Trial Court may exercise its discretion with respect to the entry of an order to enforce the command of the subpoena for the production of correspondence.

IV. Finally the argument of the defendant that the order of committal for contempt constitutes an "indeterminate sentence" which is invalid because "cruel and unusual punishment" (Const. of the U. S., Amend. VIII; N. H. Const., Pt. 1, Art. 33rd) merits brief consideration. The function of the order entered below was not punishment in vindication of the public interest, but coercion to compel compliance with the prior order of the court to produce the registrations. *Penfield v. S. E. C.*, 330 U. S.

585, 593. See also, *United States v. United Mine Workers*, 330 U. S. 293, 302; *Yates v. United States*, 227 F. (2d) 844. Consequently statutes regulating the imposition of sentences for crime are inapplicable. The committal ordered it terminable upon the witness purging himself of contempt, and is not considered violative of the constitutional provisions relied upon by the defendant.

Remanded

DUNCAN and GOODNOW; *JJ.*, dissented in part.

DUNCAN, *J.*, dissenting in part: I concur in all of the foregoing opinion, except section II thereof. In my judgment the order requiring the defendant to produce the guest registrations should be vacated, and I therefore dissent from section II of the opinion for reasons hereinafter expressed.

As a result of *Pennsylvania v. Nelson*, 350 U. S. 497, the investigation authorized by the Legislature of this state is now limited to investigation of the question of "whether subversive persons as defined in said [1951] act are presently located within this state" (Laws 1953, c. 302) and whether "necessary legislation" should on that account be recommended. *Id.* The right of the committee "to exact testimony and to call for the production of documents must be found in this language." *United States v. Rumely*, 345 U. S. 441, 444. See also, *United States v. Kamin*, 136 F. Supp. 791; *United States v. Lamont*, 236 F. (2d) 312. The inquiry must therefore be pertinent to the issue of whether subversive persons "are presently located within this state" if it is to be permitted.

The committee's demand for production of the guest registration was supported by no claim for information in the possession of the committee concerning the guests (other than speakers) to indicate that their identification by name might relate to the subject matter of the investi-

gation. Cf. *Wyman v. Sweezy*, 100 N. H. 103, 112. The demand rested only upon the testimony of the witness as to the total number of guests for each session, in the course of which he stated that "very few" of the guests came from the State of New Hampshire.

In *Wyman v. Sweezy*, *supra*, it was pointed out that a question may not be sustained as relevant "on a mere possibility that it might lead to later relevant questions" (*Id.*, 106); and that the resolution authorizing the investigation "does not . . . authorize [the Attorney General] to examine private citizens indiscriminately in the mere hope of stumbling upon valuable information." *Id.*, 110. The information sought by the committee is not limited to the names of guests resident here (Cf. *Rumely v. United States*, 197 F. (2d) 166, 176) nor is it represented that the names cannot be obtained by less objectionable methods (see *Dennis v. United States*, 341 U. S. 494, 542; note, 56 Columbia L. Rev. 798, 801), or that production of the registrations may show the activities of the Center to be subversive. The conduct of the guests does not fall within the same category as that of the defendant and speakers at the Center, which has consisted of public endorsement and advocacy of ideas; and no suggestion has been made that by mere presence at the Center the guests became members of any organization, or advocated any action, lawful or otherwise. The committee seeks to know "who was there," in order by further examination to "find out what went on."

In view of the restricted purpose of the investigation, which is more closely confined than the purposes of the congressional investigations with the cases relied upon by the majority were concerned, production of the registrations is at best only a diffused and remote approach to the issue of whether subversive persons are "presently located" in New Hampshire, and can of itself become relevant only when coupled with other relevant information.

concerning the guests which is not shown to be at hand. See *United States v. Mathues*, 33 F. (2d) 261; *United States v. Barry*, 29 F. (2d) 817; *Bowers v. United States*, 202 F. (2d) 452. See also, *Watkins v. United States*, 233 F. (2d) 681 at 694. "It is clear that authority over a subject matter does not import authority over all activities of persons concerned in that subject matter." *Rumely v. United States*, 197 F. (2d) 166, 176.

Enforcement of the subpoena goes beyond the inquiry held relevant in *Wyman v. Sweezy*, *supra*. It calls for the names of persons largely non-resident who assembled at different times, ostensibly to discuss topics of religious, political, and economic import. The "possible answer" will not of itself be concerned with the "main object of investigation." (*Id.*, 106.)

The order of the Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution. *Wyman v. Sweezy*, *supra*, 113. See *Edgerton*, dissenting, *Bursky v. United States*, 167 F. (2d) 241, 254. Constitutional rights of the guests as well as of the witness are involved, and the Court need not restrict itself to consideration of the rights of the witness alone. See *Barrows v. Judson*, 346 U. S. 249; *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U. S. 123, 187; Comment: Inquiry Into Political Activity, 65 Yale L. J. 1159, 1183-1189. The role of the guests with respect to the subject matter was not essentially different from that of the purchasers of pamphlets pertaining to national issues in the *Rumely* case *supra*. "On a record such as this so slim a semblance of pertinency is not enough to justify inquiry violative of the First Amendment." *Rumely v. United States*, 197 F. (2d) 166, 172. See also, *United States v. Rumely*, 345 U. S. 41, 46.

The record does not disclose such a public necessity for production of the registrations as to warrant abridgment of the privilege of the individuals concerned to exercise their civil liberties free from threatened involvement in the legislative investigation of subversive persons.

I am authorized to state that Goodnow, J., concurs in this dissent.

Opinion of Supreme Court of New Hampshire, Upon First Motion for Rehearing

#4533

WYMAN V. UPHAUS

(Decided February 28, 1957)

Motion for rehearing denied; opinion modified as follows:

On page 4 of the duplicated opinion, strike out the first sentence in the second paragraph from the bottom of the page which commences as follows: "It appears that the witness" etc.

Amend the second sentence in this paragraph to read as follows: "It appears that the witness was a supporter of numerous organizations on the subversive list prepared by the House Committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities."

March 27, 1957. WHEELER, J., took no part in the consideration of this motion.

Laws of New Hampshire 1951

CHAPTER 193

AN ACT RELATIVE TO SUBVERSIVE ACTIVITIES

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

It shall be a felony for any person knowingly and willfully to

assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization;

It shall be a felony for any person after August 1, 1951, to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

New Hampshire Laws, 1953

JOINT RESOLUTION RELATING TO THE INVESTIGATION OF SUBVERSIVE ACTIVITIES

*Resolved by the Senate and House of Representatives
in General Court convened:*

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state.

.

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation.

.

[Approved June 17, 1953.]

New Hampshire Laws, 1955

CHAPTER 197.

AN ACT RELATIVE TO INVESTIGATION OF SUBVERSIVE ACTIVITIES

*Be it enacted by the Senate and House of Representatives
in General Court convened:*

1. **SUBVERSIVE INVESTIGATION.** The investigation of subversive activities by the attorney general provided for by chapter 307 of the Laws of 1953, as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, manner and authority as therein provided for the further period until June 30, 1957.

.

[Approved June 14, 1955.]

Order**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

In the case of No. 4533 Wyman v. Uphaus the court upon November 15, 1957, made the following order:

Former result affirmed; case remanded.

Concord, November 15, 1957.

By order of the Court:

GEORGE O. SHOVAN,
Clerk.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.

FILED

MAR 8 1958

JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1958

No. ~~72~~ 34

WILLARD UPHAUS

v.

THE STATE OF NEW HAMPSHIRE

*On Appeal from The Supreme Court of The State
of New Hampshire*

MOTION TO DISMISS

THE STATE OF NEW HAMPSHIRE

By: LOUIS C. WYMAN, Attorney General

Of Counsel: •

DORT S. BIGG

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1957

No. 778

WILLARD UPHAUS

v.

THE STATE OF NEW HAMPSHIRE

*On Appeal from The Supreme Court of The State
of New Hampshire*

MOTION TO DISMISS

THE STATE OF NEW HAMPSHIRE

BY: LOUIS C. WYMAN, Attorney General

PRELIMINARY STATEMENT

Appellee, The State of New Hampshire, by Louis C. Wyman, Attorney General, in conformity with Rule 16 of the Rules of this Honorable Court, respectfully submits the following Motion to Dismiss the appeal of Willard Uphaus, Appellant, on the grounds specified in said Motion.

MOTION TO DISMISS

I. No substantial Federal question is involved.

Now comes the Appellee, The State of New Hampshire, by Louis C. Wyman, Attorney General, and respectfully moves that the appeal of Willard Uphaus, Appellant, as more particularly described in the Jurisdictional Statement filed by Appellant with this Honorable Court be dismissed on the grounds that no substantial Federal question is involved.

This case involves the use of the contempt power of the New Hampshire Superior Court for Merrimack County in order to compel compliance by a witness with a subpoena *duces tecum* served upon him by the Attorney General in the course of an investigation of subversive activities in New Hampshire as a legislative committee, New Hampshire Laws 1953 Chapter 307 and Laws 1955 Chapter 197. *Nelson v. Wyman*, 99 N. H. 33. By the subpoena in question the Attorney General sought to require Appellant to produce guest registrations in the New Hampshire World Fellowship Center at Albany, New Hampshire for the 1954 and 1955 seasons, and to produce "all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics" at the Center during those seasons. Upon Appellant's refusal to comply with the order for the production of the material, he was found and adjudicated in contempt, ordered committed until he should purge himself of his contempt and admitted to bail pending appeal.

There is no substantial Federal question involved in any of the several aspects of this case.

A. *No Federal question is presented by the subject matter of the New Hampshire legislative investigation, i.e., subversion against the State Government.*

It has long been held that self-preservation is the most essential right of sovereignty. *Gilbert v. Minnesota*, 254 U. S. 325, 65 L. ed. 287, 41 S. Ct. 125; *Whitney v. California*, 274 U. S. 357, 71 L. ed. 1095, 47 S. Ct. 641; *Gitlow v. New York*, 268 U. S. 652, 69 L. ed. 1138, 45 S. Ct. 625; *Dennis v. U. S.*, 341 U. S. 494,

95 L. ed. 1137, 71 S. Ct. 857. It is also axiomatic that the government of the United States and that of the several States need not wait until a subversive group has perfected its plans and only the signal to strike remains before taking appropriate action. *Dennis v. U. S.*, supra; *Gitlow v. New York*, supra. Clearly a State has the right to protect itself from subversion by inquiry of the sort provided by the New Hampshire Legislature, *Wyman v. Uphaus*, 101 N. H. ——— (decided November 15, 1957); *Nelson v. Wyman*, 99 N. H. 33. Fact finding investigation by the State legislature in furtherance of a legitimate end is a valid exercise of an accepted legislative power. *Kilbourn v. Thompson*, 103 U. S. 168, 26 L. ed. 377, 13 Otto 168; *McGrain v. Daugherty*, 273 U. S. 135, 71 L. ed. 580, S. Ct. 319; *Sinclair v. U. S.* 279 U. S. 263, 73 L. ed. 692, 49 S. Ct. 268; *Jurney v. McCracken*, 294 U. S. 125, 79 L. ed. 802, 55 S. Ct. 375.

The decision of this Honorable Court in *Pennsylvania v. Nelson*, 350 U. S. 497, 100 L. ed. 640, 76 S. Ct. 477 (1956) has no application to this case. That holding was directed at "suspending the enforceability" of State laws imposing criminal sanctions on subversive activity directed against the Federal government. All that is involved here is the right of a State to investigate in aid of legislation. Nothing in *Pennsylvania v. Nelson* remotely purports to invalidate State legislative investigations. In fact in the *Nelson* decision this Honorable Court was quite careful to point out that it did not void provisions of State law insofar as they made it a crime in the States to attempt to overthrow the Federal government by unlawful means but merely suspended their enforceability so long as the Federal Smith Act remained on the books. The decision in *Pennsylvania v. Nelson* did not seek to invalidate or suspend State laws aimed at sedition or subversion against the States themselves. Chief Justice Warren, writing for the majority expressly said:

"The precise holding of the Court, and all that is before us for review, is that the Smith Act of 1940, as amended in 1948, which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and

violence, supercedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct." 350 U. S. 497, 499.

The case of *Pennsylvania v. Nelson* does not preclude the investigation undertaken by the Appellee in pursuance of the directive of the New Hampshire Legislature.

With this in mind the decision in *Yates v. U. S.*, 354 U. S. 298, 1 L. ed. 2d 1356, 77 S. Ct. 1064, may be seen as not controlling the case at bar. *Yates* arose out of a prosecution for violation of the Smith Act and the reversal of conviction in the lower court revolved primarily around the definitions of certain terms in the Smith Act.

- B. *No Federal question is presented in the decision of the New Hampshire Legislature to constitute the Attorney General and his staff a committee to investigate subversive activities within the confines of the State.*

"We accept the finding of the State Supreme Court that the employment of the Attorney General as the investigating committee does not alter the legislative nature of the proceedings. Moreover this Court has held that the concept of separation of powers embodied in the United States Constitution is not mandatory in State government. *Dreyer v. Illinois*, 187 U. S. 71, 47 L. ed. 79, 23 S. Ct. 28; . . . "

Sweezy v. New Hampshire, 354 U. S. 234, 1 L. ed. 2d 1311, 77 S. Ct. 1203.

- C. *No question is presented here regarding the scope of authority vested in the Attorney General by the New Hampshire legislature nor is there question but that the specific information being sought was in fact desired by the legislature.*

"The legislative history (of New Hampshire laws 1955, Chapter 197) makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions." *Wyman v. Uphaus*, 101 N. H. ——— (decided November 15, 1957)

On Wednesday, July 10, 1957, the General Court of New Hampshire under suspension of the Rules adopted by more than a two-thirds vote (275-24 in the House; 16-6 in the Senate) a Resolution to the effect that the General Court authorized the questions put and wanted and continues to want the information which is sought.

"Senate Joint Resolution
relative to interpretation of legislative intent
on subversive activities.

"Whereas the attorney general has for several years been conducting a fact-finding investigation of subversive activities in New Hampshire for the General Court pursuant to law, and

"Whereas, by the laws of this state the attorney general for these purposes has been found by the Supreme Court of New Hampshire to be a constitutionally delegated legislative committee of this body, and

"Whereas, in the course of the aforesaid investigation one Paul M. Sweezy refused to respond to questions of the attorney general which questions and report thereof was made by the attorney general to this legislature on January 5, 1955, and

"Whereas, in decreeing the questions put to Sweezy were put without authority the United States Supreme Court on June 17, 1957 stated that

"The lack of any indications that the Legislature wanted the information the attorney general attempted to elicit from petitioner must be treated as the absence of authority."

"Now therefore, be it,

"Resolved by the Senate and House of Representatives in General Court convened:

"That this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezy by the attorney general acting in this State, authorized these questions, wanted and continues to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court . . . neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the Legislature wanted to be informed when it initiated this inquiry."

Laws 1957, Chapter 347.

- D. *No substantial Federal question is involved in the demand for the particular information requested by the Attorney General.*

The range of questioning and of information and materials sought is always subject to the requirement of relevancy. *U. S. v. Orman*, 207 F. 2d 148 (1953); *U. S. v. Josephson*, 165 F. 2d 82 (1947); *Rumely v. U. S.*, 345 U. S. 41 (1953); *Barenblatt v. U. S.*, 100 App. DC 13, 240 F. 2d 875; *McGrain v. Daugherty*, 273 U. S. 135 (1927); *In re Chapman* 166 U. S. 661 (1897). See: 33 B. U. Law Review 337 (1953) Liacos, "Rights of Witnesses Before Congressional Committees."

The relevancy of questions asked by an investigating committee is not to be determined solely by the standards applicable at the trial of issues in court "because of the scope and purpose of (legislative) investigations, pertinency . . . is necessarily broader than relevancy in the law of evidence." *U. S. v. Orman*, 207 F. 2d 148, 153. If the question asked or material sought is directed at a possible answer which would be reasonably concerned with the main object of the investigation, it is relevant. *U. S. v. Orman*, supra at 154; see also *Sinclair v. U. S.*, supra at 299.

The State Supreme Court in the instant case found the information sought by Appellee's subpoena of the guest registration list and the correspondence with or concerning speakers at the Center was clearly relevant to the legislative inquiry. *Wyman v. Uphaus*, 100 N. H. 436. In so holding the State court did not, as implied by Appellant's Jurisdictional Statement, Page 8, rely wholly upon the fact that Appellant and some of his guest speakers were members of organizations on the U. S. Attorney General's List of Subversive Organizations. On the contrary, the State Supreme Court in the instant case carefully considered the question of relevancy in the light of considerable information concerning the Appellant, his guest speakers, and the World Fellowship Center in general, produced by the Attorney General and concluded that "we believe this contention (that the guest list and the correspondence did not contain any information bearing on the subject of the investigation) so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Attorney General and the law applicable to the same." *Wyman v. Uphaus*, supra at 494, citing *Flaxer v. U. S.*, 235 F. 2d 821; *Marshall v. U. S.*, 176 F. 2d 473; *Morford v. U. S.*, 176 F. 2d 54.

It is important to observe that the bulk of the evidence relied upon by the New Hampshire Supreme Court in arriving at this decision was taken directly from Appellant's own testimony. Even a cursory examination of this testimony will reveal unmistakable indications of the probable presence at World Fellowship, Inc., of persons with exactly such information as the legislative inquiry so obviously seeks.

The fact that here the information is sought by the means of subpoena *duces tecum* does not alter the case to constitute an unreasonable search and seizure, nor does it change the pertinent nature of the information requested. The subpoena *duces* became necessary only after the witness refused the information by oral question and answer.

In *Application of Linen Supply Co.* 15 F.R.D. 115, District Judge McGohey had before him the objection of the appellant to a grand jury subpoena in an anti-trust investigation. In dis-

cussing the question of reasonableness of subpoenas generally, McGohey, Jr., stated at page 118:

"The questions of reasonableness as to the period and subjects covered by the subpoena are interrelated and will be considered together. A subpoena duces tecum must be limited to a reasonable period of time and specify with reasonable particularity the subjects to which the desired writings related. It can be readily agreed that as the time period lengthens, so must the particularity increase. Some courts have set ten years as the outside limit and some have quashed subpoenas covering even shorter periods of time. In other cases, however, because of peculiar facts, courts have sustained subpoenas covering much longer periods of time. In all these cases it is recognized that the facts in each individual case are the determining factors. More important than the formal results in these cases are the tests and extent of the investigation; the materiality of the subject matter to the type of investigation; the particularity with which the documents are described; the good faith of the party demanding the broad coverage; a showing of need for such extended coverage. I think these subpoenas meet these tests."

The subpoenas before this Honorable Court each cover only a period of less than one year preceding their issuance. They are limited to the summer season and activities of World Fellowship, Inc. of which Appellant is the executive director. They call for names of registrants and a guest registration list which is in existence in readily available form on 3" x 5" cards. (R. 38, 1, 17). Correspondence called for by the subpoena is particularly described as being that between the executive director and persons who participate as leaders of discussions, panels, or principal speakers at World Fellowship, Inc. over a period of but a few weeks. Nothing in the subpoena is unreasonable as to time, place or persons.

See Annotations: 58 A.L.R. 1263

" 58 Am. Jur. "Witnesses" ss. 20, 21, 25

" 70 C.J. 50, "Witnesses" s. 37

II. The case of *Sweezy v. State of New Hampshire* is not controlling.

Sweezy v. State of New Hampshire, 354 U. S. 234, 253, 254, 255, 1 L. ed. 2d 1311, 77 S. Ct. 1203, was decided on the basis that

"The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the Attorney General to gather the kind of facts comprised in the subjects upon which the petitioner was interrogated."

"The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from the petitioner must be treated as the absence of authority. It follows that the use of the contempt power, notwithstanding the interference with Constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment."

If any question ever existed as to whether or not the Attorney General's inquiries were directed towards the information desired by the New Hampshire Legislature that question was specifically answered on Wednesday, July 10, 1957 when the General Court of New Hampshire adopted by more than two-thirds vote the resolution which appears supra at Page 5. If it be contended that this resolution operates retroactively it is nevertheless, incontrovertible evidence of the intention of the Legislature with regard to the principal inquiry. The authority of the committee (Attorney General) is a continuing matter (New Hampshire Laws 1957, chapter 347) and the General Court has specifically directed that it "continues to want" such information.

The New Hampshire Supreme Court in this connection stated, "The Legislative history makes it clear beyond a reasonable doubt that it (the Legislature) did and does desire an answer to these questions. Laws 1957, chapter 347, approved July 11, 1957. We believe that the Legislature was entitled to the information sought." *Wyman v. Uphaus*, 101 N. H.—(decided November 15, 1957).

After the decision of the District of Columbia Court of Appeals in *Barenblatt v. U. S.*, 100 App. D. C. 13, 240 F. 2d 875 (1957) this Honorable Court ordered the court below to reconsider its decision in the light of the *Watkins* and *Sweezy* cases. (*Barenblatt v. U. S.*, 354 U. S. 178, 1 L. ed. 2d 1533, 77 S. Ct. 1392) This procedure was followed in this case. After such reconsideration the District of Columbia Court of Appeals in a well reasoned decision (*Barenblatt v. U. S.*, CCADC January 16, 1958) held that *Watkins* and *Sweezy* were not controlling. The New Hampshire Supreme Court arrived at the same conclusion in the principal case.

Here there is no vagueness in the Resolution nor its basic law. Cf. *Watkins v. United States*, 354 U. S. 178, 1 L. ed. 2d 1273, 77 S. Ct. 1173. The New Hampshire Subversive Activities Act of 1951, New Hampshire Revised Statutes Annotated Chapter 588, is patterned on the Ober Act in Maryland and is most carefully drafted state legislation. Nowhere is there any issue similar to that in *Weiman v. Updegraff*, 344 U. S. 183, 97 L. ed. 216, 73 S. Ct. 215, wherein a State sought to attach criminal penalties to innocent and unknowing conduct. Fact finding is not prosecution, nor is it nor has it been here persecution. The witness is not a criminal defendant except insofar as there has been a refusal to answer relevant questions, which was a contempt of the Superior Court and not of the committee.

Here, too, the witness knows perfectly well what the Legislature is talking about in its basic legislation and what it is investigating pursuant to resolution. The presence or absence of subversive persons or subversive organizations or subversive activity is the subject matter of investigation—in short, whether World Fellowship, Inc. is a subversive organization—a subject that everyone

is quite familiar with in the State of New Hampshire i. e., does it have for one of its purposes "to engage in or advocate, abet, advise or teach activities intended to overthrow, destroy or alter . . . (The Government of the United States or of the State of New Hampshire or either of them) RSA 588:1. There is here no reason to invoke a concept of explanation to the witness as a condition precedent to question and answer. This is self-evident when the basic law of New Hampshire with its clear-cut and precise definitions is compared with the general term of "un-American activities". Cf. *Watkins v. U. S.* 354 U. S. 138 1 L. ed. 1273 77 S. Ct. 1173.

The instant case may be sharply distinguished from *Watkins v. U. S.* supra. There, this Honorable Court held that in order to support a conviction under a statute punishing refusal to answer pertinent questions of a Congressional Committee, the interrogator must state for the record the subject under inquiry at that time and indicate the manner in which the propounded questions are pertinent thereto. In the principal case Appellee took great pains to state for the record both the subject under inquiry and the manner in which propounded questions were believed to be pertinent. See, *Record of Reserved Case*, pages 13, 14, 15, 26, 27, 28, as well as *Transcripts of Hearing in Executive Session* on June 3, 1954 and August 31, 1955.

Moreover, the decision in the *Sweezy* case fundamentally differs from the one presently at bar in several basic respects. This case does not concern itself with the classroom. Nor does it touch in any way the academic freedoms. This case is concerned merely with the production of certain correspondence and a guest registration list of Appellant's public camp. In this connection it is worthy of note that since 1927 a provision has been in force in the State of New Hampshire specifying as follows:

"All hotel keepers and all persons keeping public lodging houses, tourist camps, or cabins shall keep a book or card system and cause each guest to sign therein his own legal name or name by which he is commonly known. Said book or card system shall at all times be open to the inspection of

the sheriff or his deputies and to any police officer." New Hampshire Revised Statutes Annotated Chapter 353, section 3.

For thirty-one years this statute has been on the books in New Hampshire and undoubtedly similar provisions are in force in most of the forty-eight States. No one during that entire period has seriously questioned the constitutionality of this rather innocuous law clearly in the public interest. Certainly if any power were within the scope of a simple police regulation this is such a power. Any deputy sheriff or local police officer is entitled to the same information as that sought by the Attorney General of the State of New Hampshire acting in pursuance of a direct order of the entire legislative assembly of that State. We are thus faced with appellant's extreme proposition asserting a requirement of proffering to those who seek to subvert and overthrow our constitutional government, immunity from the simplest, most basic of police regulations.

The information sought by the Attorney General (committee) here deals with a group of persons connected with an organization which the Appellant described in high-sounding, self-serving terms (*Wyman v. Updeus*, 100 N. H. 436, 438) but the true exact nature of which is the very point under investigation by New Hampshire. Information in the hands of the Attorney General set forth in the record (Pages 13, 14, 15 and others) clearly indicates that the World Fellowship Center, Inc. was in all probability a breeding ground of the precise type of individual activity at which the New Hampshire Legislature aimed its investigation. The Court is not bound to accept the statements of the Appellant characterizing his activities and the organization in question.

"The defendant's denial that he advocated, taught, or in any way furthered the aim of overthrowing constitutional government by force or violence in his lecture, is simply his determination of that fact which the committee could believe or not as it saw fit. The witness could not by his answer impose upon the investigating committee the burden of

producing evidence that a doctrine aimed at the violent overthrow of existing government was in fact advocated by him before it could inquire of him concerning the lecture." *Wyman v. Sweczy*, 100 N. H. 103, 108.

The use of contempt power of the State Superior Court in this situation is appropriate and apt. Although liable to abuse, contempt power is essential to the protection of the courts in the discharge of their functions. Without it judicial tribunals would be at the mercy of the disorderly and violent who respect neither the laws enacted before the vindication of public and private rights nor the officers charged with the duty of administering them. *Ex parte Terry*, 128 U. S. 289, 313 (1888); 12 Am. Jur., *Contempt*, §40; 17 C.J.S. *Contempt*, §§43, 106, 109.

CONCLUSION

This case is essentially very simple. *Subpoenas duces* by a legislative committee seeking names and correspondence have been held by the State's highest court to be relevant and pertinent. In no manner does the information called for involve an unreasonable search and seizure, an unwarranted invasion of any right of privacy, nor suppress freedom of speech, assembly or association, directly or indirectly.

The record—which includes all transcripts of testimony by appellant in the state investigation and all materials incorporated therein by reference, as well as the transcript of proceedings before the Superior Court on January 5, 1956—shows on its face at least the following:

1. That the witness, Willard Uphaus, has been a member or sponsor of many organizations which persons in positions of responsibility in the United States have believed to be Communist dominated, Communist infiltrated or Communist controlled, and hence subversive within the language of the New Hampshire statute under which the present subpoenas were issued. (For these purposes it is be-

believed irrelevant that such "citation" by the United States Attorney General or the House Committee on Un-American Activities may have been without notice and hearing to the organization involved, inasmuch as no reliance is placed on such citation here except to show the need for investigation to see whether there is or has been subversion at World Fellowship, Inc.)

2. That the witness Uphaus by his own testimony did not know whether many of the individuals attending World Fellowship, Inc. during 1954 and 1955 were presently or had been in the past members of the Communist party and/or members of organizations cited as subversive and Communist controlled and never inquired into their "political affiliations" (Reserved Case, 53:41).

3. That the correspondence requested for the year 1954, for example, is narrowed to perhaps twenty or less persons (Reserved Case, 44:24) and the registration cards, including probably less than three hundred persons in each year, are 3 x 5 and readily available in a small packet (Reserved Case, 54:2).

4. That there are files of correspondence with persons invited to speak at World Fellowship, Inc. which the witness recognized as under *subpoena duces* "regardless of whether the correspondence was with (a person who) . . . was or was not a Communist" (Reserved Case, 34:9).

5. That among those whom the record shows attended and spoke at World Fellowship, Inc. were William Hinton, Dirk Struik, Julian Shuman, John Pratt Whitman, Florence Luscomb, Janet Sharp, Anne Winston, Carl Ryan, Thelma Dale, J. Franklin Pineo, Ruth Crawford, Richard Morford, Mary Jane Keeney, Helen and Scott Neering, etc., many of whom have substantial public records of membership in organizations repeatedly cited as subversive or Communist controlled.

It is curious that all of these persons, and others, should have and have had an affinity to and meet at World Fellowship, Inc. The General Court is concerned to find out whether there was subversion or mere dissent at World Fellowship, Inc.

Neither New Hampshire nor any state should be prohibited from such responsible inquiry under the aegis of the judiciary and confined to relevant and pertinent questioning. A call for information extending to names and correspondence with speakers, some of whom, on information and belief, are shown by the record to have probably, and certainly possibly, been then or formerly Communists, is of obvious pertinence to a directive to investigate and report concerning the presence or absence of subversive persons or subversive organizations within the State of New Hampshire. Is World Fellowship, Inc. a legitimate, if controversial, meeting place for radicals, dissenters and dreamy-eyed visionaries, all assembling within the Bill of Rights, or is it a incubation spot for subversion, intrigue and potential espionage and sabotage against the United States and the State of New Hampshire? This question is under investigation by the State. The State is rightfully concerned. In seeking to find the facts, the New Hampshire General Court has met repeatedly the willful, deliberate and contumacious contempt of Willard Uphaus, who refuses to produce even the names of the guests attendant there during the years in question.

Claims of conscientious objection, allegations of religious freedom and innuendos of persecution and harrassment cannot becloud the basic fact that "political privacy" in America does not and should not include privacy of subversion nor license to conspire against the security and safety of State or Nation.

The New Hampshire Supreme Court has found legislative intent that the information requested by these subpoenas is wanted by the General Court. It has also found that it is pertinent and relevant. On these facts, where the scope of authority vested in the delegated committee has been approved by both State and United States Supreme Courts; where *Pennsylvania v. Nelson* supra most certainly does not extend to investigation in aid of legislation as distinct from prosecution; where neither suppres-

sion of free speech nor free association nor unreasonable search and seizure is involved; and where the activity under investigation is so clearly related to a vital concern of the sovereign State of New Hampshire at this particular stage of world affairs, it is clear that no substantial federal question is presented by the request for the pertinent information called for by the subpoenas.

A final word in respect to the "suggestions" of appellant's counsel at page 13 of their jurisdiction statement with respect to summary *vacatur* and the continuing "effect" of appellee's action upon appellant and "others in New Hampshire."

If any summary action is warranted by this record, it is a summary dismissal of the appeal and not vacation of the State's Supreme Court decision. Such things as those presently involved are a major concern of any state. Assume, *arguendo*, that Federal authorities are inclined neither to investigate nor prosecute and assume, further, that there is subversion contemplating incitement to the commission of overt acts against the security of state and nation at World Fellowship, Inc., Cf *Yates v. U. S.*, 354 U. S. 298, 1 L. ed. 2d 1356, 77 S. Ct. 1064 can it be reasonably said that the legislature of the state in which such activity takes place may not investigate? The purpose of such an investigation is to determine whether legislation is necessary or desirable. It is not beyond the bounds of possibility that the state legislature might wish to legislate concerning World Fellowship, Inc. It is possible that the legislature might wish to afford such a corporation an opportunity for notice and hearing on the issue of dissolution of its charter as a voluntary corporation in the event that it is found to be substantially controlled or dominated by persons who themselves are subversive or urge, aid or harbor known subversives. *Surely a State is not required by the Federal Constitution to await the putsch within its borders if its legislative body is not so inclined. In matters of survival there is and can constitutionally be no paramount interest in the federal government in respect to State security.*

The innuendo implicit in the "continuing effect of appellee's action upon appellant and others in New Hampshire" suggests some kind of authoritative monster brandishing the club of con-

formity over intellectual interchange of ideas. Nothing could be farther from the truth. A review of the record in this case will show again that the witness has been questioned in a courteous manner. It will show that there has been no attempt to characterize the witness nor to force him to say or believe something different than his personal convictions. As was said before the Superior Court and as appears in the transcript of the reserved case at page 28, "there is no charge made at this point in the proceeding that Willard Uphaus is subversive," and at page 16, The Committee (Attorney General) stated:

"I know and I respect Mr. Uphaus' disinclination to be an informer. Many people have felt that way from the time they were little children, and it is taught to you as an American when you are growing up, but in this situation the freedom of speech which has been sacrosanct for years in our Bill of Rights is modified because of the fact that the state is trying to find out if there is any subversion around. He says that he is not pleading self-incrimination. He says that he is not a Communist; yet there is a record of his association with persons and organizations which is replete with Communist activities throughout the years."

Appellant has never been confined. An order that appellant stand committed until purged of contempt is in conformity with settled practice over the years. Such orders are constantly made in equity proceedings. They are peculiarly apt to the situation presented to the New Hampshire Supreme Court on January 5, 1956, by respondent's willful contumacy. Appellant in any such formula holds the key to his own dilemma. He is not being forced to talk himself into jail nor into a prosecution. He has never claimed the privilege against self-incrimination. It is unreasonable to give credence to assertions that a claim of stigma attaches which is in the nature of an odium. If there is any stigma here it is directly attributable to appellant's own activity, to his own free choice in life and to an unlawful and unreasonable defiance of the General Court of the State of New Hampshire.

Given a pertinent and relevant question in pursuance of an investigation under constitutional mandate, a witness has but two alternatives, with or without advice of counsel. First, to refuse to answer, claiming his personal privilege against self-incrimination if, in his honest opinion, a truthful answer might incriminate him or perhaps to expose him to the risk of prosecution or, second, answer the question. To extend the first amendment in limitation on answers to pertinent questioning in the field of sedition, subversion, conspiracy, espionage, sabotage and treason, is to give judicial sanction to palpable subterfuge genuinely obstructing in unnecessary and unreasonable fashion the legitimate efforts of government to keep abreast of subversion within the greatest free Republic remaining in the world. *By American law the life of every citizen on issues of loyalty and security should be an open book, subject always to his right to take the fifth and not the first amendment.*

Appellee respectfully moves this Honorable Court to dismiss appellant's appeal for want of any substantial, vital question in this particular case.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By LOUIS C. WYMAN
Attorney General

Of Counsel:

DORT S. BIGG

March 4, 1958

APPENDIX

Chronology of Events

1. Appellant first questioned in Executive Session, June 3, 1954.
2. Subpoenas served, September 10, 1954.
3. Appellant refused to produce the documents called for by the subpoena, September 27, 1954.
4. Appellee filed a petition in the Superior Court of Merrimack County to enforce the subpoenas, October 20, 1954.
5. Appellant appeared again in Executive Session and again refused to comply with the subpoena, August 31, 1955.
6. Supreme Court of New Hampshire decided a jurisdictional issue in favor of Appellant, (*Wyman v. Uphaus*, 100 N. H. 1) September 28, 1955.
7. Petition to Superior Court of Merrimack County brought by Appellee pursuant to Chapter 491, sections 19 and 20 of the New Hampshire Revised Statutes Annotated in order to compel Appellant's compliance with the subpoenas. The case was heard, January 5, 1956.
8. Appellant adjudged in contempt and ordered committed to the Merrimack County Jail until purged of contempt; released on bail, January 5, 1956.
9. Appellant appealed to Supreme Court of New Hampshire which upheld the court below (*Wyman v. Uphaus*, 100 N. H. 436), February 28, 1957.

10. Appellant appealed to the United States Supreme Court which vacated the judgment below and remanded the case back to the New Hampshire Supreme Court.

October 10, 1957

11. Upon Appellee's motion for reinstatement of the judgment against Appellant the New Hampshire Supreme Court reaffirmed its former opinion (*Wyman v. Uphaus*, 101 N. H.—)

November 15, 1957

12. Appellant appealed to the United States Supreme Court filing a Jurisdictional Statement.

February 8, 1958

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IN THE
Supreme Court of the United States

OCTOBER TERM 1957

No. ~~278~~ 34

WILLARD UPHAUS,
Appellant,
v.

LOUIS C. WYMAN, Attorney General, State of
New Hampshire,
Appellee.

On Appeal From the Supreme Court of New Hampshire

BRIEF IN OPPOSITION

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IN THE
Supreme Court of the United States

OCTOBER TERM 1957

No. 778

WILLARD UPHAUS,

Appellant,

v.

**LOUIS C. WYMAN, Attorney General, State of
New Hampshire,**

Appellee.

On Appeal From the Supreme Court of New Hampshire

BRIEF IN OPPOSITION

Each of appellee's arguments in his motion to dismiss is equally applicable to *Sweezy v. State of New Hampshire*, 354 U. S. 234. This Court's decision and denial of the petition for rehearing in that case are necessarily dispositive of appellee's present motion.

Nevertheless, some of appellee's statements call for brief comment.

1. Appellee first argues that no federal question is presented because the "subject matter" of the investigation was "subversion against the State Government" (p. 2). This argument confuses two different matters: the alleged legislative purpose and the appellant's constitutional rights.

2. Appellee next seeks to meet this Court's conclusion in *Sweezy* that the enabling resolution was too vague to constitute a source of appellee's authority. In support, appellee cites a legislative resolution of July 10, 1957 relating to Dr. Sweezy (p. 5). Since the resolution referred to Dr. Sweezy, not to appellant herein; considerably post-dates appellant's alleged contemptuous conduct; and was unsuccessfully presented to this Court in the petition for rehearing in *Sweezy*, it cannot aid appellee herein.

3. Appellee next asserts that the particular information sought by him was relevant to the "legislative inquiry" (p. 7) and, thus, he says, no federal question is involved. To this assertion we make the following response:

(a) This Court's principal opinion in *Sweezy* found the enabling resolution too vague a basis under the Fourteenth Amendment to compel answers to appellee's question.

(b) Mr. Justice Frankfurter's concurring opinion in *Sweezy* upheld "the right of a citizen to political privacy," 354 U. S. 234, 266-7, in the absence of substantial evidence of state necessity. The record herein equally lacks proof of such necessity. Lectures at appellant's private camp are as much protected by the First Amendment as those at a public educational institution.

(c) Here, two judges dissenting in the Court below declared that "enforcement of the subpoena goes beyond the inquiry here relevant in *Wyman v. Sweezy* (Juris. St., p. 33) and that "so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment." (*Ibid.*, quoting *Rumely v. United States*, 197 F. (2d) 166, 172, affirmed 345 U. S. 41.)

4. Appellee's argument that the *Sweezy* case is not controlling because of the Resolution of July 10, 1957 is dis-

cussed above at page 2. *Barenblatt v. United States*, — Fed. 2d —, No. 787, Oct. Term, 1957, in which the Court of Appeals for the District of Columbia divided sharply shows the existence of substantial federal questions.

5. Appellee's present attempt to distinguish *Sweezy* on the ground that appellant's case does not involve "the academic freedoms" is rather odd since in *Sweezy* appellee heavily relied upon the state's right to inquiry "into what is said in any lecture." (*Sweezy v. New Hampshire*, *supra*, Petition for Rehearing, p. 5.)

6. Appellee's reference to a state law requiring hotel keepers to keep guest lists for examination by a police officer is completely irrelevant to the issues herein. World Fellowship is a charitable corporation operating a non-profit summer camp (Juris. St., p. 6); it is not a hotel keeper. No sheriff or police officer has sought to examine World Fellowship's books for the routine purposes underlying such procedures. Instead, this is a political inquiry by the Attorney General into matters protected by the First and Fourteenth Amendments.

7. Appellee states that the appellant "is not being forced to talk himself into jail nor into a prosecution" (p. 17). However, appellant is being compelled to choose between violating his conscience against giving the names of innocent persons to appellee to be bandied about and harassed, and spending the balance of his life in jail.

8. Appellee denies that he relies for relevancy upon the membership of appellant and guest speakers at World Fellowship in organizations listed by the Attorney General (p. 7). See *Wieman v. Updegraff*, 344 U. S. 183. However, appellee's entire argument, as summarized in the five points on pages 13 and 14, rests almost wholly on the concept that membership in such an organi-

zation is *prima facie* evidence of guilty association. Appellee states that "there is no charge at this point in the proceeding that Willard Uphaus is subversive" (p. 7). But he adds " * * * yet there is a record of association with persons and organizations which is replete with Communist activities throughout the years * * * " (*ibid.*).

That this is the gravamen of the charge of relevancy is borne out by appellee's listing of persons prominent in the liberal movement of America "many of whom have substantial public records of membership in organizations repeatedly cited as subversive or Communist controlled" (p. 14).

No such organization has been found, after a hearing affording due process, to be either subversive or Communist-controlled. It is the genius of our democratic system that Americans have united in voluntary associations peacefully to advocate reform and that such right of association is protected by the First Amendment. That a small religiously motivated pacifist summer camp in the mountains of New Hampshire should raise a question in appellee's mind on the record here, as to whether it is "a incubation spot (*sic*) for subversion, intrigue and potential espionage and sabotage against the United States and the State of New Hampshire" (p. 15) is indicative of fears inconsistent with the demands of freedom.

9. It is premature to join appellee in a full argument upon the applicability to legislative investigations of *Pennsylvania v. Nelson*, 350 U. S. 497. We respectfully refer the Court to our Jurisdictional Statement in No. 332, Oct. Term 1957, pp. 9-10, 12, which sufficiently shows the existence of a substantial federal issue never adjudicated by this Court.

In conclusion:

1. The apparent purpose of appellee's motion herein is to prove that this Court erred in *Sweezy*; that argument

alone establishes the existence herein of substantial federal questions.

2. *Sweezy* will be controlling on the merits since the considerations reflected in the opinions of the Chief Justice and of Mr. Justice Frankfurter are equally applicable here.

3. Unlike the situation in *Sweezy*, two of the justices below dissented in part on the ground that appellant's federal constitutional rights were invoked.

Respectfully submitted,

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Attorneys for Appellant.

Of Counsel:

LEONARD B. BOUDIN.

March 25, 1958.

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IN THE

Supreme Court of the United States

October Term, 1958

No. 34

WIELARD UPHAUS,

Appellant,

LOUIS C. WYMAN, Attorney General, State of
New Hampshire,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

BRIEF FOR THE APPELLANT

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CONSTITUTION AND STATUTES:

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IN THE

Supreme Court of the United States

October Term, 1958

No. 34

WILLARD UPHAUS,

Appellant,

v.

LOUIS C. WYMAN, Attorney General, State of New
Hampshire,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

BRIEF FOR THE APPELLANT

Opinions Below

The first opinion of the Supreme Court of New Hampshire was rendered on February 28, 1957 (R. 94-106) and modified on March 27, 1957 in an order denying appellant's motion for rehearing (R. 114-115). As modified, the opinion is reported at 100 N. H. 436, 130 Atl. 2d 278. The opinion of two justices, dissenting in part, is similarly reported (R. 106-109). A second motion for rehearing in the State Supreme Court was denied on July 9, 1957 without opinion (R. 120).

Following this Court's *per curiam* opinion at 355 U. S. 16 (R. 122-123), the Supreme Court of New Hampshire rendered another opinion on November 15, 1957 (R. 128-130), a single judge dissenting, which is reported at 101 N. H. 139, 136 A. 2d 221.

There was no opinion in the Superior Court of the State which merely made brief "rulings and findings" (R. 2).

Jurisdiction

The judgment of the Supreme Court of the State of New Hampshire was entered on November 15, 1957 (R. 130). The amended notice of appeal to this Court was filed in the State Supreme Court on January 2, 1958 (R. 130). Subsequent to appellee's motion to dismiss which was opposed by appellant, this Court entered an order on April 7, 1958 noting probable jurisdiction (R. 134). The jurisdiction of this Court rests on 28 U. S. C. § 1257(2).

Constitutional Provisions and Statutes Involved

The United States Constitution:

Article I, § 10:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money, emit Bills of Credit; make any Thing but gold and Silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Article VI:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes of New Hampshire:

The Statutes involved are the Subversive Activities Act of 1951, N. H. Laws, 1951, c. 193; now N. H. Rev. Stat. Ann., 1955, c. 588, §§ 1-16; Joint Resolution Relating to the Investigation of Subversive Activities, N. H. Laws, 1953, c. 307 as extended, N. H. Laws, 1955, c. 197. The pertinent provisions of these statutes are reproduced in the Appendix, *infra*, pages 23 to 35.

Questions Presented

(1) Whether appellant's conviction for contempt under the aforesaid statutes for refusing to produce his correspondence with guest lecturers and the names of his guests does not violate his rights of free speech and association under the First and Fourteenth Amendments.

(2) Whether appellant's conviction was not a denial of due process under the Fourteenth Amendment by reason of:

(a) the vagueness of the said statutes,

(b) the reliance of the Court below upon "subversive" lists of the Attorney General of the United States and of the House Committee on Un-American Activities, and

(c) the irrelevancy of the said correspondence and names to any subject which appellee was entitled to investigate.

(3) Whether the subpoenas duces tecum were not so unreasonable and arbitrary as to violate appellant's rights under the Fourth and Fourteenth Amendments.

(4) Whether the said statutes had not been superseded by federal legislation under Article VI of the Constitution.

(5) Whether indefinite incarceration of appellant until such time as he subordinates to the order of the Court his conscientious scruples against informing does not constitute cruel and unusual punishment and a denial of due process under the Eighth and Fourteenth Amendments.

Statement of the Case

Appellant, Willard Uphaus, is the Executive Director of New Hampshire World Fellowship Center, Inc., herein referred to as World Fellowship. This is a pacifist organization, organized as a charitable corporation under New Hampshire law, which operates a summer camp in

that state. It is "a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose" (R. 95; see also R. 70).

World Fellowship maintains accommodations for the public and makes available to them guest lectures on topics of contemporary interest in the area of human relations (R. 95). As appellant testified:

"Generally they fitted into a program and came to speak on questions that I had suggested; or if they were celebrated ministers or lawyers, they just talked of their life's experiences. They talked sometimes without a closely expressed topic. Sometimes they just sat down for an evening around the fire and expressed their—told stories of their lives, their interest and their problems" (R. 53).

In 1953, appellee began an investigation under the 1951 Act Relative to Subversive Activities and the 1953 "Joint Resolution Relating to the Investigation of Subversive Activities" (R. 10). See *Sweezy v. New Hampshire*, 354 U. S. 234. Appellant was one of the persons subpoenaed and interrogated by appellee on the ground that he and some of his guest speakers were connected with organizations described as subversive by the United States Attorney General and by the House Committee on un-American Activities (R. 6, 17, 18, 20, 34, 55, 66, 95, 96). Appellee claimed the right "to find out whenever there were any Communist, former Communist, Communist sympathizers or fellow travelers in this state, at any time, to find out what they are up to— whether they are talking behind curtains about overthrowing the government or whether they are having philosophical discussions" (R. 19).

Although testifying fully about himself and his beliefs and associations, appellant declined to produce pursuant to subpoenas duces tecum the names of guests at the camp,

the names of its non-administrative employees such as cooks and ground-keepers and his private correspondence with or concerning the guest lecturers (R. 94).

Thereupon, appellee filed a petition with the Superior Court of Merrimack County, New Hampshire, to compel the production of this information. Such a petition, under New Hampshire practice, leads to a judicial hearing, independent of the administrative one before the Attorney General, in which the witness is again questioned and the Court after ruling upon pertinence and privilege may direct compliance and enforce its order by the contempt power (R. 8).

Appellant was called as a witness by appellee and again testified freely with respect to his own associations (R. 95-96). As the Court below stated:

"The defendant in the course of the proceedings has placed no reliance upon the Fifth Amendment to the Constitution of the United States, or the Fifteenth Article of the New Hampshire Bill of Rights. He testified that he was not a Communist and never had been, and that none of the speakers at the Center, or its guests, were to his knowledge Communists, although he was aware of the connections held by many of them and frankly conceded his own activities in past years. He testified that at no time at the Center was there any advocacy of overthrow of the government by force or violence. A teacher by profession, and holding a Ph.D. degree in religious education from Yale, he described himself as a pacifist, and believer in a 'form of Christian social society.' " (R. 96)

In addition, letters of three of his pastors in the Methodist Church were read into the record describing him in such terms as "a dedicated Christian, earnestly seeking to find expression for the Christian ideals of love and justice in the modern world" (R. 22-24).

One cannot read appellant's uncontradicted testimony as to his beliefs and motivations without realizing that here is an unusual man who not merely professes belief in the great principles of the Sermon on the Mount but who strives earnestly to translate them into action in his own life. From young manhood, a Y.M.C.A. Worker, an active member of the Methodist Church, the acquirer of a doctorate in religion at Yale University and then a teacher of religion at a midwestern college and later at Yale, the application of the principles of religion to life was his uppermost idea. It led him to dedicate himself to the betterment of understanding between individuals, groups and nations. It led him into active participation in groups like the American Peace Crusade and the Committee for the Protection of the Foreign Born, organizations which the Attorney General deemed subversive and to attendance at a peace conference in Warsaw where he advocated peaceful co-existence. All these activities he discussed and explained as part of his way of life. It was these activities, not communism or advocacy of violent overthrow, which led to the appellee's investigation.

After answering all questions concerning himself, his activities and those carried on at World Fellowship, appellant declined to produce the guest lists, the names of non-administrative employees and his correspondence with the guest lecturers (R. 50), on the basis of both conscience and constitutional right (R. 7, 12). "I have been moved first" he said "by my religious convictions, by my inner conscience, by the direct teachings of the Bible that it is wrong to bear false witness against my brother" (R. 14).

Appellant and his counsel noted that appellee had published the names of innocent people who had been guests, to their injury (R. 7, 9, 15); that the questions were not pertinent (R. 9-10, 13, 25, 29, 48, 57, 65, 68, 97) and that the inquiry violated appellant's constitutional rights of privacy, association and freedom of speech (R. 13-15, 28).

The Superior Court overruled appellant's objections (R. 88-89), denied his motion to dismiss the proceedings and directed him to produce the guest list (*ibid.*). Upon his refusal, appellant was adjudged in contempt of court and sentenced to imprisonment until he should purge himself of contempt (R. 88, 90). The Superior Court also ruled that appellant was not required to produce the names of his non-administrative employees (R. 51, 72, 95). It did not rule upon appellant's duty to produce his personal correspondence with and concerning the guest lecturers. It transferred that matter, without ruling, to the Supreme Court of New Hampshire (R. 88).

Upon exceptions duly filed, the case was heard on appeal in the Supreme Court of New Hampshire. That Court resolved the constitutional issues against appellant in its opinion of February 28, 1957 (R. 94). It relied repeatedly upon its earlier decision in *Wyman v. Sweezy*, 100 N. H. 103, later reversed by this Court in *Sweezy v. State of New Hampshire, supra* (R. 97, 100, 103-104).

The state Supreme Court held that this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497 did not render invalid the subpoenas duces tecum served upon appellant (R. 97-98). It rejected appellant's arguments with respect to his constitutional rights and lack of pertinency, again upon the basis of its decision in *Sweezy* (R. 103). In this connection it relied upon the connections of appellant and some of the guest speakers with organizations on the United States Attorney General's list (R. 103, 115). It held that appellant was required to produce both the names of the guests and the correspondence with guest speakers. It remanded the case so that appellant might be committed until he should purge himself of his contempt (R. 95, 109).

An appeal was taken to this Court. Upon the filing of a jurisdictional statement, this Court vacated the judgment below, remanding the cause to the Supreme Court

of New Hampshire "for reconsideration in light of *Sweezy v. New Hampshire*, 354 U. S. 234" (R. 122-123). Thereupon, that Court, one judge dissenting in part, rendered the decision herein appealed from, concluding with the following statement:

"We have again reconsidered our opinion in the light of the Supreme Court's decision in the *Sweezy* case and we adhere to our original ruling in *Wyman v. Uphaus, supra*." (R. 129)

Summary of Argument

I

The order below was made in the same investigation which resulted in this Court's decision in *Sweezy v. New Hampshire*, 354 U. S. 234, and the decision therein is controlling here. The order abridged appellant's constitutionally protected rights of association, speech and belief under the First and Fourteenth Amendments. The claimed justification consists principally in associations with organizations on the so-called "subversive lists". Despite similar associations by Sweezy, this Court found no "exigent and compelling" reason for compelling Sweezy to give the requested information.

The demand for the production of the lists of guests and the correspondence with speakers was not relevant to the subject which appellee claimed to be investigating, namely subversive activities under the Act of 1951. Since appellant had denied either membership in the Communist Party or the advocacy of violence in the correspondence or lectures, there was no fair likelihood that the production of the material subpoenaed would do more than interfere with both privacy and political associations and expression.

II

The 1953 resolution under which the inquiry was made was too vague to show that the legislature desired the information subpoenaed herein. *Sweezy v. New Hampshire, supra*. Since the information related to the exercise of constitutionally protected freedoms of association and speech, this absence of clear authority and legislative control deprived appellant of due process of law.

III

The investigation herein was based upon New Hampshire's 1951 sedition law. That statute is expressly predicated upon the existence of an international communist movement whose objective is the overthrow of the United States—not New Hampshire alone. Hence, the statute and the resulting investigation thereunder are invalid by reason of supersession under *Pennsylvania v. Nelson*, 350 U. S. 497.

IV

The order below would require appellant's indefinite incarceration until his compliance with it. Since appellant's refusal was founded upon conscientious scruples against injuring others, and since the State was inquiring into the exercise of fundamental freedoms of association and speech, the order itself was unreasonable and constituted cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments.

ARGUMENT

I

The order below violated appellant's rights of association, speech and belief under the First and Fourteenth Amendments.

The problem presented by this case is identical with that in *Sweezy* which we believe to be controlling. Both investigations were allegedly authorized by the same resolution intended to implement the *New Hampshire Act Relative to Subversive Activities*. In each the Attorney General was inquiring into the exercise of such constitutionally protected freedoms as speech, belief and association. In each the principal excuse for the inquiry was the connection of the witness and others with organizations on "subversive" lists compiled by the United States Attorney General or the House Committee on Un-American Activities.* (R. 96, 99, 100, 103). Each appellant testified that he had never been a member of the Communist Party and had never advocated the forcible overthrow of the government.

Professor *Sweezy* had declined to answer two kinds of questions—(a) the contents of a lecture at the University of New Hampshire—and particularly whether it included advocacy of Marxism; (b) the activities of other persons with the Progressive Party and, in one instance, with the Communist Party. *Sweezy v. New Hampshire*, 354 U. S. 234.

*The reliance of the Court below upon (a) the distribution at World Fellowship of political literature and appellant's attendance at a conference in Warsaw upon the invitation of a man with a Communist reputation merely emphasizes the state's attack upon freedom of association and speech, and its reliance upon the principle of guilt by association.

This Court, reversing the judgment of a unanimous state court, upheld his refusal to answer such questions. The two opinions supporting the reversal found that the State's interest did not justify the abridgement of constitutionally protected freedoms of speech and association. This Court did not regard associations with alleged "subversive" organizations sufficient reason to abridge the appellant's "inviolability of privacy." This was consistent with this Court's recognition in *Wieman v. Updegraff*, 344 U. S. 183 of the limited purpose of such lists—viz., to determine fitness for governmental employment.

The position of the instant appellant is even stronger than that of Professor Sweezy. Appellant answered all questions with respect to himself (R. 4); disclosed the names of his guest lecturers (R. 96); testified that he did not know of their ever having been Communists (R. 39); and that the correspondence contained no suggestion that "they discuss the overthrow of government by force and violence, or that they discuss Marxism or Leninism" (R. 54). There was no correspondence with the Communist Party (R. 73). The questions in dispute relate exclusively to the names of guests and to correspondence with lecturers; hence, the unwillingness of the trial court herein to decide appellee's right to the correspondence, and the dissent of two members of the court below with respect to the guest registrations.

The argument was made below that the lists of names and the correspondence might reveal something "subversive" despite the appellant's disclaimer under oath (R. 103). That would have been equally true in *Sweezy*. However, a greater likelihood of such results must exist in order to justify an interference with First Amendment rights. There was no showing of pertinency in the proposed disclosure of the names of members of the public who became paying guests at World Fellowship, or in the proposed examination of private correspondence with guest lec-

turers. Indeed appellee has admitted that the correspondence would not advocate overthrow of the government * (R. 44). The state court's reliance upon *United States v. Orman*, 207 F. 2d 148 (C. A. 3, 195), overlooks the absence therein of the counter-balancing rights of privacy and political association. Such rights were involved in *National Association for the Advancement of Colored People v. Alabama*, 357 U. S. 449, where this Court noted that "compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association", there, citing the concurring opinion in *Sweezy* that the "subordinating interest of a state must be compelling" and concluded that Alabama "has fallen short of showing a controlling justification for the deterrent effect which disclosure of membership lists is likely to have." These observations are equally true in the instant case.

Free association and discussion of public issues is as necessary in summer adult educational centers and camps as in academic institutions, such as that involved in *Sweezy*. Indeed, *Sweezy* involved a state institution over which New Hampshire had special supervisory power. Cf. *Adler v. Board of Education*, 342 U. S. 485. A private institution is entitled to even greater immunity from governmental supervision.

New Hampshire sought in the 1951 statute and the implementing resolutions to interfere with associations admittedly lawful. This Court commented in *Sweezy* upon the breadth of the 1951 statute's definition of "subversive persons" and "subversive organizations." Noting that the State Supreme Court had held that the former encompasses persons engaged in the specific conduct " . . . whether or not done 'knowingly and wilfully . . .', *Nelson v. Wyman*; 99 N. H. 33, 39," it added: "The potential sweep of this definition extends to conduct which is only remotely related

* While in appellee's view, *infra*, pages 14-15, pacifism may be equivalent to subversion, it is certainly the antithesis of the forcible overthrow of the government which, at most, was the subject under investigation.

to actual subversion and which is done completely free of any conscious intent to be a part of such activity" *Sweezy v. New Hampshire*, 354 U. S. 234, 246-247,

It is this statute which the Attorney General was enforcing upon instructions "to find out if there were subversive persons, as defined in that Act, present in New Hampshire" (see *Sweezy, supra*, p. 246). That was his admitted reason for seeking the lists of guests herein. He expressly claimed the right "to find out who in this state are members of subversive organizations even if they do not know them to be subversive organizations, even if they are not criminal" (R. 35). But New Hampshire cannot impose upon appellant the sanction of compulsion to testify solely because he has had innocent associations of the kind involved.

Nor, if appellant's testimony had revealed the names of "subversive" persons, as defined in the 1951 Act, could the State have imposed sanctions upon them. Quite aside from the invalidity under *Pennsylvania v. Nelson, supra*, of any state sedition law, sanctions imposed upon innocent conduct in the amorphous class referred to in the 1951 Act would deny due process because of vagueness, *Watkins v. United States*, 354 U. S. 178, would interfere with the right of association, *Wieman v. Updegraff*, 344 U. S. 183, and would be a bill of attainder. Constitution, Article I, § 10. If the sanctions included interference with the right of appellant's guests and other non-residents to enter the state as visitors and reside therein, it would interfere with their liberty of movement. *Edwards v. California*, 314 U. S. 160; *Kent and Briehl v. Dulles*, 357 U. S. 116.

Appellee has admitted an intent to affect free discussion: "It is of course obvious that Mr. Uphaus isn't going to write someone and ask them to come and make a speech about overthrowing the government by force and violence. At the same time the advocacy of a doctrine that we lay down our arms in favor of a few sticks and stones and

paving the way for the coming of the Soviet Union is just as much an advocacy of the overthrow of government * * * (R. 44, see also R. 46). This admission clearly supports the dissent below when, anticipating this Courts' decision in *Watkins v. United States*, 354 U. S. 178, it pointed out: "The order of this Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution" (R. 108).

The dissenting judges below were concerned exclusively with the protection of the guests, citing *Rumely v. United States*, 197 F. 2d 166, 172, affirmed *sub nom United States v. Rumely*, 345 U. S. 41. However, the guest speakers have not surrendered their right of privacy and of association because they have spoken out on public issues. See *Sweezy v. New Hampshire*, 354 U. S. 234.

II

The resolution authorizing the Attorney General's investigation was too vague to establish legislative purpose, to protect appellant and to afford him due process.

In *Sweezy v. New Hampshire*, 354 U. S. 234, four members of this Court concluded that the 1953 resolution was too vague to indicate the precise scope of the investigation contemplated by the legislature. The opinion of the Chief Justice pointed out that a legislative investigation carries with it the responsibility "of adequate supervision of the actions of the Committee" 354 U. S. 234, 245. The opinion noted that, in the absence of such clear authority and continuing supervision, appellee's investigation might impinge upon constitutional liberties. This, in the view of four justices, was a denial of due process. The methods pursued by appellee in the instant case confirm the cogency of these observations.

The State Court upon remand from this court expressed its disagreement with the Chief Justice's opinion in the *Sweezy* case, stating that in its view the legislature did desire information of the kind involved herein. The State Court relied upon a recent legislative resolution, N. H. Laws, 1957, c. 347, approved July 11, 1957, the substance of which is set forth in a footnote,* with respect to which it said: "The legislative history makes it clear beyond a reasonable doubt that it would and does desire an answer to these questions."

The same point was made by the Attorney General in his petition for rehearing in this Court in the *Sweezy* case. That petition was denied by this Court, 355 US 852 (R. 129). Since the resolution refers exclusively to *Sweezy*, it affords even less support to the Attorney General in the present case. In any event, legislative intent in 1953 cannot be proven by a legislative enactment, *post litem motam*, in 1957. At most the latter resolution is an admission of the vagueness of the earlier one under which appellant was investigated.

* "That this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezy by the attorney general acting in this state, authorized these questions, wanted and continued to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court ' . . . neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the Legislature wanted to be informed when it initiated this inquiry'."

III

The State's power to conduct this particular investigation has been nullified by existing federal legislation.

Appellant was subpoenaed pursuant to a joint resolution authorizing the Attorney General to make an investigation "with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state." (N. H. Laws 1953, Ch. 307 as extended, Laws 1955, Ch. 197, Appendix, pp. 33, 34). The joint resolution authorized the Attorney General "to make public such information received by him." It directed him "to proceed with criminal prosecution under the Subversive Activities Act whenever evidence presented to him in the course of investigation indicate violations thereof, * * *". Finally, it provided for his report to the legislature as to "the results of this investigation, together with his recommendations, if any, for necessary legislation." *

The 1951 statute contains a finding that "there is a world Communist movement under the domination of a foreign power, having as its objective, the establishment of totalitarian dictatorship in all parts of the world under its control" (Appendix, p. 23). Other findings in that statute set forth the detailed techniques employed to accomplish that objective. Thereafter, the statute defines subversive organizations and subversive persons as those who by certain specific means seek "the overthrow, destruction or alteration of, the constitutional form of the government of the United States or of the State of New Hampshire or of any political subdivision of either of them by force or violence" (*id.* at pp. 24-25).

* The "necessary legislation" as the dissenting opinion below notes would be based upon the discovery of such "subversive persons" in the state. R. 106.

It is plain from the foregoing that this statute is not limited to purely local matters. (See *Commonwealth v. Gilbert*, 334 Mass. 71, 134 N. E. 2d 13; *Braden v. Commonwealth* (Ky.) 291 S. W. 843.) Indeed, while references are made to both the federal and state governments, the thrust of the statute is towards an alleged international conspiracy directed against this country and not against New Hampshire or any other particular state.

There is nothing in this or the *Sweezy* records in this Court, or in the opinions in the other similar New Hampshire cases, *Kahn v. Wyman*, 100 N. H. 245, 123 Atl. 2d 166; *Nelson v. Wyman*, 99 N. H. 33, 105 Atl. 2d 756, which would suggest that we are dealing here with a local problem. Hence, the comment of this Court in *Sweezy*: "We do not now conceive of any circumstances wherein a state interest would justify infringement of rights in these fields." 354 U. S. 234, 251.

Under these circumstances, the New Hampshire Subversive Activities Act of 1951 and the resolutions based thereon are superseded by the Smith Act as amended, 18 U. S. C. § 2385, and other federal sedition laws. Under this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497:

"The conclusion is inescapable that Congress has intended to occupy the field of sedition. Taken as a whole, they evince a Congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore a state sedition statute is superseded regardless of whether it purports to supplement the federal law."

Nelson involved a state sedition law. The same principle should apply to any state investigation of the same subject. For such an investigation can be justified constitutionally only if it could result in valid legislation. This is not possible under the rule of *Nelson*.

However, that general problem as to the validity of state sedition investigation need not be resolved herein. In the present case the investigation of appellant is based upon the state's sedition law. The Attorney General's functions are limited to determining whether that statute has been violated and "whether subversive persons as defined in said Act" are located within the State of New Hampshire. If that sedition law is invalid under the *Nelson* case, the investigation which is intended to enforce and implement it is equally so.

IV

The indefinite sentence below constitutes such cruel and unusual punishment as to violate the Eighth and Fourteenth Amendments.

This is not the ordinary case of commitment until a contemnor has complied with a judicial order. The unusual complex of circumstances herein suggests that the indefinite sentence here imposed constitutes such cruel and unusual punishment as to be a denial of due process.

Appellant answered every question as to his own conduct and his own political views. He was not actuated by self-interest or disrespect for the judicial process.

His uncontroverted statement, from which we quote briefly, indicates his motivation:

"I have been moved first by my religious convictions, by my inner conscience, by the direct teachings of the Bible that it is wrong to bear false witness against my brother; and in as much as I have no reason to believe that any of these persons whose names have been called for have in any sense hurt this state or our country, I have reason to believe that they should not be in the possession of the Attorney General. In the next place, the social teachings of the Methodist Church teach us clearly and specifically that we in the United States should stand up and uphold civil

and religious rights; and in particular, it condemns guilt by association, and my counsels have made the point that that is the crux of the question. Next, Your Honor, I hold before me here this precious Bill of Rights to which reference has been made. I have grown up under that. I have for years been nurtured under that. I believe in it. I am a son of American soil and I love my country; and I love this document and I propose to uphold it with the full strength and power of my spirit and intelligence." (R. 14)

Appellee himself stated: "I know and I respect Mr. Uphaus' disinclination to be an informer" (R. 19).

It was these principles which led appellant to refuse to give the names of the maintenance employees at his camp whom he described as ordinary working men whose politics were unknown to him (R. 50, 51). In this he was sustained by the trial court (R. 51, 72).

Then they led him to decline to give his private correspondence with the various persons who were to give lectures at the camp. To permit the Attorney General to rifle through such private correspondence and to make it the subject of a public report to the New Hampshire legislature and the people of New Hampshire would certainly have embarrassed many innocent people. It was on this point that the trial court had such grave doubts that it referred the matter to the appellate court (R. 2, 88).

Finally, appellant declined to reveal the names of several hundred guests, principally from out of the state, and many of whom may have registered as a result of an open invitation by wayside signs, who, too, might well have been subjected to public obloquy by the exposure of their names in a report by the Attorney General (R. 97). The injury that might be inflicted on them is indicated by the fact that the Attorneys General of thirty-seven states keep a cross-index file of names appearing in such investigations (R. 7). Innocent persons returning home might find themselves

haled before their own Attorney General. On this point it will be recalled, two members of the Court below agreeing with appellant, denied the existence of a "public necessity for production of the registrations as to warrant the abridgement of the privilege of the individual's concern to exercise their civil liberties free from threatened involvement and the legislative investigation of subversive persons" (R. 109).

It is obvious that appellant was motivated by very strong conscientious principles against injuring other persons. The moral justification for not being an informer are too well known to require recitation here. It is enough to call this Court's attention to the recent action of New York State's Commissioner of Education requiring the New York Board of Education to retain school teachers who refused to be informers (*Matter of Adler*, Decision No. 6199, aff'd *Matter of Board of Education of the City of New York, etc. v. Allen, et al.*, 6 Misc. 2d 453, aff'd (App. Div. 3d) 173 N. Y. S. 2d —).

It may be proper in commercial and similar litigation, particularly where private rights of parties are involved, to commit a contemnor until he complies with a judicial order. It cannot be proper to provide for such indefinite commitment where, as here, the right of the individual conscience is counterpoised against the right of the state. The state is entitled to use all reasonable measures to compel compliance with its lawful orders but it would be "repugnant to the conscience of mankind", *Palko v. State of Connecticut*, 302 U. S. at 323, to employ the sanction of permanent imprisonment because the appellant will not surrender his conscientious principles.

Neither the federal government nor any state government other than New Hampshire has found it desirable or necessary to make indeterminate commitments in the course of investigations of political associations. Cf. *United States v. Field*, 193 F. 2d 92, cert. den. 342 U. S. 894; *United States v. Patterson*, 219 F. 2d 659; *Ullman v. United*

States, 350 U. S. 422, rehearing denied 351 U. S. 928; *State v. Raley*, 164 Ohio St. 529, 133 N. E. (2d) 104, judgment vacated, — U. S. — ; *Yates v. United States*, 227 F. 2d 844, remanded 355 U. S. 66, upon which the court below relied, is now a decision in the opposite direction in view of this Court's latest decision therein. 356 U. S. 363, vacating judgment in 252 F. 2d 568.

Such a sanction is certainly "cruel and inhuman punishment" under the Eighth Amendment. It would render the judgment below invalid if *Adamson v. California*, 332 U. S. 46, were to be reconsidered. But in any event the sanction must fall before the mandate of the Fourteenth Amendment as "inhuman and barbarous", In *re Kemmler*, 136 U. S. 436, 447. Permanent imprisonment until one is prepared to subordinate his religious principles to the state and to injure innocent persons does not meet the due process clauses of "demand for civilized standards". See Mr. Justice Frankfurter concurring in *Louisiana ex rel. Frances v. Resweber*, 329 U. S. 459, 468.

CONCLUSION

The decision of the New Hampshire Supreme Court should be reversed with instructions to dismiss the proceedings.

Respectfully submitted,

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Appendix

(Laws of New Hampshire 1951)

CHAPTER 193

AN ACT RELATIVE TO SUBVERSIVE ACTIVITIES

Whereas, there is a World Communist movement under the domination of a foreign power, having as its objective the establishment of totalitarian dictatorship in all parts of the world under its control; and

WHEREAS, such dictatorship is characterized by the liquidation of all political parties other than the Communist Party, the abolishment of free speech, free assembly, and freedom of religion, and is the complete antithesis of the American constitutional form of government; and

WHEREAS, the methods used by such a police state include treachery, deceit, infiltration into governmental and other institutions, espionage, sabotage, terrorism and other unlawful means; and

WHEREAS, the World Communist movement is not a political movement, but is a world-wide conspiracy having sections in each country; and

WHEREAS, using the methods above set forth, it has already successfully conquered in recent years a large part of the world and has established spearheads in this country in the form of various conspiratorial organizations, some masquerading under the pretense of being political parties, others infiltrating organizations which they seek to control in order to further the objectives of the World Communist movement; and

WHEREAS, the subversive groups have had similar objectives and it is essential to the preservation of the state,

as well as for the protection of citizens from unfounded accusations, that criminal acts of a seditious nature be clearly and expressly defined; and

WHEREAS, the methods adopted by subversive persons and organizations render it imperative that the loyalty of persons entering the public employment of the state of New Hampshire or any of its political subdivisions be definitely established, not only for protection of governmental processes but in order to shield employees from unfounded accusations of disloyalty; therefore

Be it enacted by the Senate and House of Representatives in General Court convened:

1. *Subversive Activities.* Amend the Revised Laws by adding after chapter 457 the following new chapter:

CHAPTER 457-A

SUBVERSIVE ACTIVITIES

1. *Definitions.* For the purposes of this chapter "organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, association, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of government of, the United States, or of the state of New Hampshire, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the *bona fide* purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

SEDITION

2. *Felonies.* It shall be a felony for any person knowingly and wilfully to

(a) commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to

assist in the overthrow, destruction or alteration of, the constitutional form of the government, of the United States, or the state of New Hampshire, or any political subdivision of either of them, by force or violence; or

(b) advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of New Hampshire or of any political subdivision of either of them; or

(c) conspire with one or more persons to commit any such act; or

(d) assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars or imprisoned for not more than twenty years, or both, at the discretion of the court.

3. *Penalty.* It shall be a felony for any person after August 1, 1951, to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

4. *Barred from Office.* Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of sections 2 and 3 of this chapter, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(a) holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of New Hampshire or any agency thereof or of any county; municipal corporation or other political subdivision of said state;

(b) filing or standing for election to any public office in the state of New Hampshire.

5. *Dissolution of Organizations.* It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of New Hampshire and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of New Hampshire, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of New Hampshire, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of New Hampshire.

6. *Assistance Furnished.* For the collection of any evidence and information referred to in this chapter, the attorney general is hereby directed to call upon the superintendent of state police, and county and municipal police authorities of the state to furnish him such assistance as may from time to time be required. Such police authorities

are directed to furnish information and assistance as may be from time to time so requested. The attorney general may testify before any grand jury as to matters referred to in this chapter as to which he may have information.

7. *Records.* The attorney general shall maintain complete records of all information received by him and all matters handled by him under the requirements of this chapter. Such records as may reflect on the loyalty of any resident of this state shall not be made public nor divulged to any person except with the permissions of the attorney general to effectuate the purposes hereof.

8. *Grand Jury Inquiries.* The superior court, when in its discretion it appears appropriate or when informed by the county solicitor that there is information or evidence of the character described in section 2 of this chapter to be considered by the grand jury, shall charge the grand jury to inquire into violations of this chapter for the purpose of proper action, and further to inquire generally into the purposes, processes and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons.

LOYALTY

9. *Employment.* No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision of this state.

10. *Written Statements Required.* Every person and every board, commission, council, department, court or other agency of the state of New Hampshire or any political subdivision thereof, who or which appoints or employs or

supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be, shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury.

11. *Exceptions.* The inquiries prescribed in section 10 other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule and regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this chapter will not be dangerous to the health of the citizens or the security of the government of the United States, the state of New Hampshire or any political subdivision thereof.

12. *Present Employees.* Every person, who on August 1, 1951 shall be in the employ of the state of New Hampshire or of any political subdivision thereof, other than those now holding elective office shall be required on or before October 1, 1951 to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this chapter, namely, any person who commits,

attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this chapter such statement shall be prepared and execution required by every person and every board, commission, council, department, court, or other agency of the state of New Hampshire or any political subdivision thereof responsible for the supervision of employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this chapter shall immediately be discharged.

13. *Discharge of Personnel; Hearing.* Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The personnel commission shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of New Hampshire or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the state classified service shall establish rules

or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter shall promptly report to the attorney general the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right within thirty days thereafter to appeal to the superior court of the county where such person may reside for a determination by such court (with the aid of a jury if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this act. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the supreme court of New Hampshire as in civil cases.

14. *Declarations of Candidates.* No person shall become a candidate for election to, nor qualify for, any public office under the election laws of this state unless he or she shall file with the declaration of candidacy, or prior to qualifying, an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be received for filing by any town or city clerk or by the secretary of state unless accompanied by the affidavit aforesaid and there shall not be entered upon any ballot or voting machine at any election the name of the person who has failed or refused to make the affidavit aforesaid. (As amended by L. H. Laws 1953, Ch. 180.)

15. *False Statements.* Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a

material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this chapter, or (c) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions, pursuant to this chapter, or (d) in any written statement by an applicant for appointment or employment or by an employee in any state aid institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury shall be subject to the penalties of perjury prescribed in chapter 457 of the Revised Laws.

16. *Separability.* If any provision, phrase, or clause of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, phrases, or clauses or applications of this chapter which can be given effect without the invalid provision, phrase, or clause or application and to this end the provisions, phrases and clauses of this chapter are declared to be severable.

17. *Title.* This chapter may be cited as the Subversive Activities Act of 1951.

This act shall take effect August 1, 1951.

(Approved August 1, 1951.)

(New Hampshire Laws, 1953)**JOINT RESOLUTION RELATING TO THE INVESTIGATION OF
SUBVERSIVE ACTIVITIES**

*Resolved by the Senate and House of Representatives
in General Court convened:*

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state. The attorney general is authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable. He may authorize any member of his staff to conduct on his behalf any part of the investigation herein provided for and in such event and for such purposes any member so authorized shall have all of the powers herein granted to the attorney general.

For the purposes of this resolution, the attorney general or any duly authorized member of his staff is authorized to sit and act at such times and places during this session of the 1953 legislature, recess and adjourned periods, and to employ such attorneys, experts, clerical and other assistance as may be required, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to administer such oaths, to take such testimony and to make such expenditures within the limitations authorized herein as he deems advisable. The provisions of section 7 of chapter 193 of the Laws of 1951 shall be inapplicable to the investigation provided for herein, and the attorney general is hereby authorized to make public such information received by him, testimony given before him, and matters handled by him as he deems fit to effectuate the purposes of this resolution.

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation. There is hereby appropriated for the expenses of this investigation the sum of ten thousand dollars which shall include the cost of printing such report as is provided for by this resolution and shall be expended under the direction of the attorney general, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws. The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

[Approved Jun 17, 1953.]

(New Hampshire Laws, 1955)

CHAPTER 197.

AN ACT RELATIVE TO INVESTIGATION OF SUBVERSIVE ACTIVITIES.

Be it enacted by the Senate and House of Representatives in General Court convened:

1. SUBVERSIVE INVESTIGATION. The investigation of subversive activities by the attorney general provided for by chapter 307 of the Laws of 1953, as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, manner and authority as therein provided for the further period until June 30, 1957. The attorney general shall report to the general court of 1957 the results of this further investigation together with his recommendations, if any, for necessary legislation. He may at any time during said period temporarily or permanently conclude his investigation hereunder if, in his opinion, no useful public purpose would be served by continuation of the investigation. There is hereby appropriated for the expenses of this continued investigation a sum not to exceed forty-two thousand five hundred dollars, which shall include the cost of printing such report as is provided for hereby, but nothing herein contained shall limit the power of the attorney general to act in cases of reasonable necessity under the provisions of section 11 of chapter 24 of the Revised Laws (section 12, chapter 7, RSA). The governor is hereby authorized to draw his warrants for the sum hereby appropriated out of any money in the treasury not otherwise appropriated.

2. TAKES EFFECT. This act shall take effect upon its passage.

[Approved June 14, 1955.]

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IN THE
Supreme Court of the United States
October Term, 1958

No. **85**
LLOYD BARENBLATT,

Petitioner,

UNITED STATES OF AMERICA,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. **84**
WILLARD UPHAUS,

Appellant,

LOUIS C. WYMAN, Attorney General, State of
New Hampshire,

Appellee:

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

**BRIEF OF NATIONAL LAWYERS GUILD
AS AMICUS CURIAE**

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IN THE
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No.

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Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

**BRIEF OF NATIONAL LAWYERS GUILD
AS AMICUS CURIAE**

The Interest of the National Lawyers Guild

This brief is filed with the written consent of all parties to these cases. The National Lawyers Guild solicited this consent because of its concern, as a national bar association, with the preservation of the constitutional rights

of the people against governmental encroachment. In its view the present cases are significant because their decision may determine whether, as appeared indicated by *Watkins v. United States*, 354 U. S. 178, and *Sweezy v. New Hampshire*, 354 U. S. 234, the end is in sight to the unprecedented (354 U. S., at p. 195) era of inquisition into thoughts and associations in ways boldly adapted from the Star Chamber and Court of High Commission by the Dies Committee in the late 1930's and since carried forward by certain Congressional committees and other inquisitorial bodies.

The National Lawyers Guild believes that such bodies are in fundamental conflict with the Constitution in their disregard of the inviolability of ideas and peaceful associations, for their basic assumption appears to be that security and freedom are inherently incompatible, that the demands of security are paramount and, thus, that the road to security lies through repression.

The product of this assumption has been the technique of public exposure as a means of suppressing the ideas of which these bodies do not approve. Often there is no possible purpose to their activities except the instigation of black-lists, reprisals, and public hostility, of which these bodies then make pious disclaimer. See *Watkins v. United States*, 354 U. S., at p. 198. Cf. *N. A. A. C. P. v. Alabama*, 357 U. S. —, 2 L. ed. (2) 1488.¹

¹ One of the results of the continued activity of Congressional and state bodies investigating the political and social beliefs of witnesses has been the establishment, in several Southern states, of state committees investigating the activities of the National Association for the Advancement of Colored People and of Negro and white supporters of this Court's desegregation decision in *Brown v. Board of Education*, 347 U. S. 483 (1954). This problem is now before this Court in the case to be argued with *Uphaus, Scull v. Virginia ex rel. Committee on Law Reform and Racial Activities*. And see Robison, *Protection of Associations from Compulsory Disclosure of Membership*, 58 Col. Law Rev. 614, 615-19 (May 1958).

There is scarcely any phase of the intellectual and cultural life of America which these bodies have considered beyond their reach, whether in politics, science, religion, philosophy, music, painting, literature, education, entertainment, or the professions. They have self-construed their vague grants of authority as sufficiently broad to permit investigation of any and every kind of organizational relationship, whether fraternal, social, political, economic, educational, or otherwise, and of every kind of propaganda, including limitless inquiries into any and all ideas, opinions, beliefs and associations and any and all individuals and organizations. Their main interest has been "names" and they themselves have asserted, established and determined the pertinency of their questions in their pursuit of "Un-American" and "subversive" persons and propaganda.

The effects of the committees' activities as an impediment to free expression and to free association in our country² have been recognized by the National Lawyers Guild and others from the inception of these bodies. Their procedures, which readily accept hearsay, hearsay on hearsay, unsubstantiated gossip and unqualified opinion and which deny the basic rights of confrontation and cross-examination, the effective aid of counsel, and the right to produce and to compel the production of evidence, lend themselves easily to smear and to the destruction of careers and reputations without any of the traditional and historic safeguards of due process.

² The petitioner and appellant in the present cases are persons whose occupations deal with ideas, the one a college teacher and the other a philosopher and religious thinker. Of the many Americans who have refused to answer questions put to them by such committees, ~~they~~ who based their refusals on pertinency or First Amendment grounds were prosecuted for contempt. Aside from the petitioner and appellant these defendants included eight college professors, one public school teacher, one playwright, two attorneys, four newspapermen, two radio announcers, two union organizers, a librarian, two actors, one folk singer, and one engineer. (Cases listed and described in the *Civil Liberties Docket*, Volumes II and III, at #271 [National Lawyers Guild].)

• *Watkins and Sweezy*, by restating "several basic premises on which there is general agreement" (*Watkins v. United States*, 354 U. S., at pp. 187-8) projected the hope that these activities would be brought to an end as the Constitution requires that they should. For the limitations which our constitutional scheme of government imposed upon such legislative sponsored investigations were thus summarized:

" . . . There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. This was freely conceded by the Solicitor General in his argument of this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible.

" . . . The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged." (354 U. S., at pp. 187-8).

"We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." (*Id.*, at p. 200).

Yet in these and the other (*Flaxer v. United States*, 354 U. S. 929; *Sacher v. United States*, *ibid.*; see also — U. S. S., 2 L. ed. (2) 987) cases remanded for reconsideration in the light of *Watkins* the courts below decided the issues in terms of the validity of the actions of the committee and

of the attorney general within the scope of their enabling resolutions. But in so doing, it seems to us, they erroneously passed over and assumed the constitutional validity of the resolutions themselves (see Judge Fahy's dissent in the opinion on the remand, joined in by Chief Judge Edgerton and Judge Bazelon in *Flaxer v. United States*, — F. (2) —, at p. —, slip opinion, pp. 3-4 [C. A. D. Col., No. 12027, April 3, 1958]).

In view of the narrow grounds of these holdings that the convictions are unaffected by *Watkins* and *Sweezy*, the National Lawyers Guild believes that the issues transcend the interest of these cases or of the particular petitioner and appellant, for they relate to whether the restatement of fundamental principles in *Watkins* and *Sweezy* marked a return to historic concepts of freedom in America or whether these principles are to be vitiated by a grudging application and narrow construction.

For no less than the weight and sanctity of the Court's trusteeship of the Bill of Rights is involved.

Introduction

In *Barenblatt* the alleged contempt of the Committee consists of the refusal of the petitioner to confirm or deny the testimony of a preceding witness that, while a graduate university student, he had been a member of a Marxist discussion group. In *Uphaus* the alleged contempt is in appellant's refusal to produce a list of guests at the summer camp of World Fellowship and correspondence with and concerning guest lecturers at the camp.

The National Lawyers Guild believes that there is no room under the Constitution, in *Barenblatt*, for a legislative interest in confirming, by exacting an admission, a particular university student's membership in a Marxist discussion group or, in *Uphaus*, for a state interest in compelling the production of a list of guests and lecturers

at a summer camp which seeks to bring together "for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children." (*Uphaus* Petition, p. 18).

In our view the starting point for discussion is the command of the First Amendment that Congress shall make "no law" abridging speech, press, or association. This would exclude Congress from the area of ideas and opinion, including peaceful political, intellectual, cultural or economic associations.

If it were assumed that there is still an allowable area for legislative action despite the sweep of the First Amendment and the reservation of non-delegated rights to the people by the Ninth and Tenth Amendments, then a definitive instruction to the agent from the principal, Congress, narrowly limiting the agent within the permissible bounds is constitutionally necessary. A general grant of power to investigate "subversive" or "Un-American" propaganda or activity is so hopelessly vague as to deny the possibility of an effective criterion for pertinence, and hence as a guide to the witness or as a standard for judicial review. Therefore in our view there is no power to subpoena because the grant of power is void for vagueness. Cf. *Winters v. New York*, 333 U. S. 507; *Lanzetta v. New Jersey*, 306 U. S. 451.

We believe that the issues are controlled by the Bill of Rights and not by a committee or staff member's elastic and *ad hoc* rationalizations of pertinency, or the clarity of a direction to answer, important as those issues are. For unless the Constitution controls over the committees' ever-expanding constructions of pertinency through free-wheeling lines of inquiry, the inherent vice of their enabling resolutions will ever continue to act as a pervasive restraint upon freedom of expression and association and as a trap for the witness who can determine the pertinency of a question only by jeopardizing his liberty in a prosecution for criminal contempt.

ARGUMENT

POINT I

The resolutions creating the House Committee and establishing these investigative functions of the New Hampshire Attorney General are both unconstitutional and void as abridgements of freedom of speech and assembly in violation of the First Amendment and, in *Uphaus*, the Fourteenth Amendment.

A. The House Committee Resolution Is a Pervasive Restraint Upon First Amendment Freedoms.

“ * * * Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking.” *Watkins v. United States*, *supra*, at p. 197.

“The Bill of Rights is applicable to investigations as to all forms of government action.” (Id., at p. 187.) See also *United States v. Rumely*, 345 U. S. 41; *United States v. Harris*, 347 U. S. 612.

The resolution on its face and as it has been consistently applied, including its application here to a Marxist discussion group, abridges the freedom of speech, discussion and political expression which is protected against governmental invasion by the First Amendment, since it is upon the unabridged exercise of these rights that free government depends. *De Jonge v. Oregon*, 299 U. S. 353; Cf. *Terminiello v. City of Chicago*, 337 U. S. 1; *Thomas v. Collins*, 323 U. S. 516; *Schneiderman v. United States*, 320 U. S. 118; *Thornhill v. Alabama*, 310 U. S. 88; *Cantwell v. Connecticut*, 310 U. S. 296; *Schneider v. State*, 308 U. S. 147; *Herndon v. Lowry*, 301 U. S. 242.

As Judge Edgerton noted in his dissent in *Barsky v. United States*, 167 F. (2d) 241, 255:

"That the committee's investigation does in fact restrict speech is too clear for dispute. . . ."

"The effect is not limited to the people whom the Committee stigmatizes or calls before it, but extends to others who hold similar views and to still others who might be disposed to adopt them. It is not prudent to hold views or to join groups that the Committee has condemned. People have grown wary of expressing any unorthodox opinions. No one can measure the inroad the Committee has made in the American sense of freedom to think. There has been some suggestion that it restrains only timid people. I think it nearer the truth to say that, among the more articulate, it affects in one degree or another all but the very courageous, the very orthodox, and the very secure."

The peculiar characteristic of the functioning of this Committee, as the facts here show, is the exercise of the power of inquiry for purposes of exposure and harassment rather than for legislation.

The power to investigate is not an express, but an implied power. Therefore when investigation is attempted by Congress the inquiry is "whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be executed by Congress. If not, Congress cannot exercise it." *United States v. Harris*, 106 U. S. 629, 636. Were it otherwise, the question of the assertion of the power to investigate or the use of implied powers as ends in themselves would effectively nullify all constitutional limitations on Congressional jurisdiction. *Carter v. Carter Coal Co.*, 298 U. S. 238, 291; *United States v. Butler*, 297 U. S. 1, 64; *Kansas v. Colorado*, 206 U. S. 46, 81.

Congress not only lacks express power to legislate on peaceful speech and association, but it is expressly barred from doing so. For the command of the Constitution is that as to *all* speech Congress shall pass "no law" regulating content. Yet, since the terms of the resolution are so broad that their meaning can only be established by the opinions and prejudices of those applying them, they operate as a restraint upon all speech and associations.

A statute which invades protected liberties can be sustained, if at all, only if it is narrowly drawn to deal with the precise evil which may be and is sought to be curbed. *Schneider v. State, supra*; *Centwell v. Connecticut, supra*; *De Jonge v. Oregon, supra*. It is impossible to discern any substantive evil, other than the conflict of ideas, to which the resolution is addressed. Cf. *Thornhill v. Alabama, supra*; *Winters v. New York, supra*; *Stromberg v. California*, 283 U. S. 359, 369; *Herndon v. Lowry, supra*, at 258. See Freund, *The Supreme Court and Civil Liberties*, 4 *Vanderbilt Law Rev.* 353, at 510 (1951).

Furthermore, vagueness is more objectionable in this area than in ordinary criminal statutes for a vague restraint upon civil liberties exerts an intimidating effect on speech generally and permits discriminatory application. *Lovell v. Griffin*, 303 U. S. 444.

A declaration of the invalidity of the Resolution underlying the Committee's limitless intrusions into First Amendment freedoms is thus the necessary means of ending them.

B. The Resolution Establishing the Power of Compulsory Process in the New Hampshire Attorney General to Investigate Into the Presence of "Subversive" Persons is Equally Void.

*** It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as free-

dom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. Responsibility for the proper conduct of investigations rests of course, upon the legislature itself. If that assembly choose to authorize inquires on its behalf by a legislatively created committee, that basic responsibility carries forward to include the duty of adequate supervision of the actions of the committee. This safeguard can be nullified when a committee is invested with a broad and ill-defined jurisdiction."

Sweezy v. New Hampshire, supra, at p. 245.

Despite the foregoing considerations the breadth and scope of the New Hampshire resolution is so extensive that:

" * * * the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. * * *

"Instead of making known the nature of the data it desired, the legislature has insulated itself from those witnesses whose rights may be vitally affected by the investigation. * * *

" * * * Separating the wheat from the chaff, from the standpoint of the legislature's object, is the legislature's responsibility because it alone can make that judgment. In this case, the New Hampshire legislature has delegated that task to the Attorney General.

"As a result neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. * * * " (*Id.*, at pp. 253-4).

As a result of the inability to ascertain whether the questions relate to the legislature's area of interest it is impossible to determine whether the legislative interest is of sufficient importance to justify the infringement occasioned by the inquiry.

" * * * The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from petitioner must be treated as the absence of authority. It follows that the use of the contempt power, notwithstanding the interference with constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment." *Supra*, at pp. 254-5.

Therefore the effect of the resolution is to place freedom in jeopardy, for the conviction ignores these words in *Sweezy* (at pp. 250-1):

"Notwithstanding the undeniable importance of freedom in the areas; the Supreme Court of New Hampshire * * * found such justification in the legislature's judgment, expressed by its authorizing resolution, that there exists a potential menace from those who would overthrow the government by force and violence. That court concluded that the need for the legislature to be informed on so elemental a subject as the self-preservation of government outweighed the deprivation of constitutional rights that occurred in the process.

"We do not now conceive of any circumstances wherein a state interest would justify infringement of rights in these fields" (emphasis supplied). (*Id.*, at pp. 250-1).

POINT II

Neither the Committee nor the Attorney General has power to issue subpoenas.

The power to compel testimony under the impress of criminal sanctions makes greater the need for clarity and therefore emphasizes the vice of vagueness in the enabling resolutions.

Those summoned before the Committee or the Attorney General need answer only pertinent questions. *Sinclair v. United States*, 279 U. S. 263. Criminality of the refusal to

testify depends upon pertinency. The witness is therefore entitled to a clear frame of reference to determine pertinency, as the accused in any criminal case is entitled to the "explicitness and clarity that the Due Process Clause requires in the expression of any element of the criminal offense." 354 U. S., at p. 209.

The House Resolution provides no clue to pertinency. The only visible test for pertinency is the agility with which the Committee spokesmen devise *ad hoc* justifications for their inquiries under the unlimited scope of the enabling resolution. See *United States v. Reese*, 92 U. S. 214; *Cline v. Frank Dairy Co.*, 274 U. S. 445; *Winters v. New York*, *supra*.

Neither Congress nor the New Hampshire legislature have given to their grants of power that "measure of added care" which is necessary where the grant is of "compulsory process that gives rise to a need to protect the rights of individuals against illegal encroachment." 354 U. S., at p. 215.

Therefore neither the Committee nor the Attorney General has the power to issue subpoenas to compel testimony, since there is no adequate guidance nor ascertainable standards to determine pertinence.

Conclusion

Under our constitutional system this Court stands "against any winds that blow." *Chambers v. Florida*, 309 U. S. 227, 241. The Court, it has declared, will not permit its claim to guardianship of "free speech to become a hollow one." (*Thomas v. Collins*, *supra*, at 517.) For under our system of government the remedy for these invasions is with the courts. *West Virginia v. Barnette*, 319 U. S. 624, 638. Thoughtful citizens have long expressed

deep concern as to the inquisitional practices of such bodies (Commager, *Who Is Loyal to America*, Harper's Magazine (September, 1947); Note, 14 University of Chicago Law Review 416; Gellhorn, *Report on a Report of the House Committee on Un-American Activities*, 60 Harvard Law Review 1193; Barth, *The Loyalty of Free Men* (1951); Biddle, *The Face of Freedom* (1951); Carr, *The House Committee on Un-American Activities* (1952); Gossett, *Are We Neglecting Constitutional Liberty? A Call to Leadership*, 38 American Bar Association Journal 817; *Letter to The President by Members of Yale Law Faculty*, 4 American Bar Association Journal 15, 16). This concern should be allayed and the traditional concept that the First Amendment protects the privacy of the people from governmental inquisition into their views, beliefs and associations should be restored.

August, 1958.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM 1958

No. 34

WILLARD UPHAUS, Appellant

v.

LOUIS C. WYMAN

Attorney General of New Hampshire, Appellee

*Appeal from the Supreme Court of
The State of New Hampshire*

BRIEF FOR APPELLEE

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1958

No. 34

WILLARD UPHAUS, Appellant

v.

LOUIS C. WYMAN

Attorney General of New Hampshire, Appellee

*Appeal from the Supreme Court of
The State of New Hampshire*

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Willard Uphaus, a resident of Hartford, Connecticut and Executive Director of World Fellowship, Inc., a voluntary corporation incorporated under the laws of the State of New Hampshire, was called to testify on June 3, 1954, in executive session, in a State investigation to determine whether there were subversive persons or subversive organizations in New Hampshire. Subsequently, on September 27, 1957, Uphaus was recalled and further questioned, again in private session. On the second occasion he was subpoenaed *duces tecum* and asked to produce for

examination by the legislative committee the names of persons who attended World Fellowship and primary correspondence with persons who were asked to and in fact did speak at World Fellowship. The latter category involved correspondence with not more than twenty persons. [T. 54, 57] Both the correspondence and the guest cards were readily available and assembled. [T. 71, 73]

When the witness refused to produce the correspondence or the guest cards the matter was transferred to the Superior Court [T. 1] in accordance with New Hampshire law, and after full hearing before the Superior Court at which time the law was found constitutional and the questions pertinent, Uphaus was directed by the Court to produce the documents and papers. Upon his continued refusal he was held to be in contempt of court and was admitted to bail in the modest sum of fifteen hundred dollars. [T. 94] The cause was heard in the Supreme Court of New Hampshire on December 4, 1956 and the right of the State to the information upheld [T. 95], whereupon Uphaus appealed to this Honorable Court. For the sake of ready reference the chronology of this case is as follows:

1. Appellant first questioned in Executive Session June 3, 1954
2. Subpoenas served September 10, 1954
3. Appellant refused to produce the documents called for by the subpoena September 27, 1954
4. Appellee filed a petition in the Superior Court of Merrimack County to enforce the subpoenas October 20, 1954
5. Appellant appeared again in Executive Session and again refused to comply with the subpoena August 31, 1955
6. Supreme Court of New Hampshire decided a jurisdictional issue in favor of Appellant (*Wyman v. Uphaus*, 100 N. H. 1) September 28, 1955
7. Petition to Superior Court of Merrimack County brought by Appellee pursuant to

Chapter 494, sections 19 and 20 of the *New Hampshire Revised Statutes Annotated* in order to compel Appellant's compliance with the subpoenas. The case was heard January 5, 1956

8. Appellant adjudged in contempt and ordered committed to the Merrimack County Jail until purged of contempt, released on bail

January 5, 1956

9. Appellant appealed to Supreme Court of New Hampshire, which upheld the court below (*Wyman v. Uphaus*, 100 N. H. 436) February 28, 1957

10. Appellant appealed to the United States Supreme Court, and without oral arguments the judgment below was vacated and the case remanded to the New Hampshire Supreme Court October 14, 1957

11. Upon Appellee's motion for reinstatement of the judgment against Appellant the New Hampshire Supreme Court reaffirmed its former opinion (*Wyman v. Uphaus*, 101 N. H. 139) November 15, 1957

12. Appellant appealed to the United States Supreme Court filing a Jurisdictional Statement February 8, 1958

13. Appellee filed Motion to Dismiss March 7, 1958

14. Probable jurisdiction noted and case set down for oral argument April 7, 1958

QUESTIONS PRESENTED

This case is solely concerned with the two subpoenas *duces* by a state legislative investigating committee calling for a guest

4

list and certain correspondence with speakers of subpoenaed witness, Wilford Uphaus, Executive Director of World Fellowship, Inc., a voluntary New Hampshire corporation.

The issues appear to be:

1. Whether *Pennsylvania v. Steve Nelson*, 350 U.S. 497, invalidated even those separate portions of State sedition statutes that regulate and prohibit subversion directed against or involving the State as distinct from the United States.
 - a. Whether such a holding itself, if to be implied, is constitutional.
2. Whether the decision in *Pennsylvania v. Nelson* "suspending the enforceability" but not voiding State sedition laws has any relation to or effect upon the State Legislature's power to investigate subversion against (a) the United States within that State or (b) against the State within that State?
3. Whether the subpoenas *duces* are void for indefiniteness, for lack of pertinency, or violative of due process by invading the witness' privacy without justifiable State interest?
 - a. Whether *Sweezy v. New Hampshire*, 354 U. S. 234, invalidates the present investigation in its entirety.
4. Whether a conditional (de bene) commitment for contempt of court in refusing to produce court-adjudged relevant documents, in existence and readily available, where the witness may be discharged by compliance and where the witness did not claim his privilege against self-incrimination, is a "cruel and unusual punishment".

5. Whether if a question is adjudged by a court after full hearing to be relevant to a constitutional legislative fact-finding investigation, the First Amendment continues there after to be available to a witness as a valid basis for refusal to answer.

Respondent respectfully believes and submits that the answers to all of the foregoing on the record in this case should be in the negative.

SUMMARY OF ARGUMENT

The constitutional power and authority of a State to investigate in aid of State legislation is undeniable. Neither *Pennsylvania v. Nelson*, 350 U.S. 497, 100 L.Ed. 640, 76 S.Ct. 477, nor *Sweezy v. New Hampshire*, 354 U.S. 234, 1 L.Ed.2d 1311, 77 S. Ct. 1203, prohibits such fact-finding power to a State legislature. Whether or not State sedition laws insofar as they relate to overthrow of the United States are themselves suspended as to enforceability by the former decision, there is much permissible State legislation which may directly result from facts developed from legislative investigation of subversive activities within a State. Thus, immunity acts, registration statutes, legislation to provide a State agency regulating suspension or revocation of the franchise of a corporation engaged in subversive activities within the State, measures to deal with subversive instigation of riot, insurrection or public disturbance, as well as legislation dealing exclusively with attempts to overthrow the State Government itself or any political subdivision within the State, by force and violence or other unlawful means, are proper grist for any legislative mill.

All that is before the Court on the present appeal is whether the subpoenas *duces tecum* for the correspondence and guest list involve any federal unconstitutionality. The State Supreme Court has said that no State unconstitutionality is involved. (T. 94) It has also said there is no violation of the Federal Constitution, and as to this Appellant seeks reversal by this Court. That the

subpoenas ask for information which is relevant to an investigation of subversion is here crystal clear. Included within the record before this Court (because it was before the Superior Court upon the occasion of the proceedings commencing in the transcript at Page 3 and continuing through Page 94) was the *Report of the Attorney General of New Hampshire* to the Legislature on January 5, 1955, with more than forty-five pages devoted to the protracted and substantial record of affiliation with, support of, or membership in, repeated organizations cited as subversive or Communist-controlled by Federal agencies on the part of named individuals who spoke at World Fellowship, Inc. during the 1954 and 1955 seasons covered by the subpoenas under consideration. The repeated, prolonged, and curiously proximate meetings and lectures at World Fellowship by persons such as William Hinton, Julian Schumann, etc., etc. may not logically be dismissed as mere coincidence. The State of New Hampshire has the right to know whether it was coincidence or plot, dissent or subversion.

The State Legislature beyond all question wants the information which is sought by these subpoenas. The State of New Hampshire is concerned to learn whether there is activity at World Fellowship, Inc. dangerous to the security of the State Government of New Hampshire.

This concern is genuine. It is based on a substantial record. It is neither reasonable nor fair to dismiss it as official nightmare. Asking questions relating to who was in attendance at World Fellowship, Inc. seeking to determine whether there is or has been subversion or advocacy of subversion as defined in a clear State statute (RSA 588) does not in any way abridge genuine freedom of speech, or association, or Appellant's freedom of religion. Whether appellant's protestations of inquisition are mere sham is perhaps best determined in light of the Attorney General's *Report to the General Court of New Hampshire of January 5, 1955*, pages 130 - 175. Whether or not sincere, the reasonable right and power of the State to inquire must remain sanctioned by judicial decision. Surely the test of fact-finding authority should never rest on the subjective state of mind of a witness.

Here there is no need to decide whether sedition within the State of New Hampshire against the United States is necessarily sedition against the State of New Hampshire. Respondent briefed and argued the affirmative of this proposition in his brief and Motion for Rehearing filed with this Court in *Commonwealth of Pennsylvania v. Steve Nelson*, 350 U.S. 497, 100 L.Ed. 640, 76 S. Ct. 477, on behalf of more than three-quarters of the States. The right of the State to *investigate* activities of organizations operating within State borders seeking to determine whether such activity endangers State security must be undeniable. This right and power to *investigate* is reserved to the States by the *Tenth Amendment*, whether or not power to legislate in proscription of subversion against the United States is presently limited by language in *Pennsylvania v. Nelson, supra*, since neither holding nor language therein limits the right of any State to *investigate* as distinct from prosecute.

Appellant's activities do not represent some kind of game of hide and seek within or behind a conventional (lawful) political party. Nor has the concern of the State of New Hampshire in this matter involved the exercise of arbitrary authority nor unreasonable interference with private rights. No one has been pushed around in New Hampshire. Appellant has not been abused, directly or indirectly.

The Legislature and the people of New Hampshire believe that Communism and Communist activity involves a serious danger to State sovereignty. They believe (as witness the language of the *Preamble* to the *Act of 1951* set forth at length in Appellant's brief at Page 23) that continuing surreptitious activity of the Communist Party or of individual Communists within the State of New Hampshire as well as throughout the United States can involve the urgent question of the survival of all of the States in a free republican form of government under the Federal Constitution.

The principle that the interest of a State in such circumstances is a vital concern is of transcendent importance: American jurisprudence in this field should rest upon the clearly expressed basic American concept that it is the responsibility of every

American citizen to answer in response to relevant questioning in the field of loyalty and security, subject always to his right to honestly take the Fifth Amendment. *Investigation of subversive activity is not investigation of lobbying or candy-making or economics of labor organizations or other day-to-day functions.* Against the backdrop of world history and international affairs showing beyond all reasonable doubt the open, calculated, notorious enmity of the Soviet Union for all things American and free, it is literally pressing that this principle should by this Court be announced as one of the concomitants of American citizenship.

As the New Hampshire Supreme Court has said in declining to reverse its original decision in the principal case (T. 129):

"We are loath to believe that under the federal constitution a state does not have the right to protect itself against subversion by inquiry of the sort provided for by our legislature. The implications of such a conclusion are so grave and so at variance with what we have considered to be the settled law that we feel any ruling to this effect must come from another tribunal than ours."

In *Sweezy v. New Hampshire*, 354 U. S. 234, L.Ed. 2d 1311, 77 S.Ct. 1203, a separate opinion by the Chief Justice, with Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan, after stating that merely summoning a witness and requiring disclosure of the nature of past expressions and associations was a measure of governmental interference in the right to associate with others and that constitutionally protected freedoms had been abridged through the same investigation as is involved in the principal case, stated:

"We do not now conceive of any circumstance wherein a state interest would justify infringement of rights in these fields. But we do not need to reach such fundamental questions of state power to decide this case. . . ."

The State interest involved is its right to take reasonable precautionary measures to insure its own survival as a free govern-

ment. The ways, wiles and devious practices of the fellow-traveller and intellectual Communist sympathizer many of whom are far too clever (with the sanction and approval of the Party itself) to be or ever have been an actual member of the Communist Party, requires the most careful of cross-examination in fact-finding investigation in order to separate the wheat from the chaff in fact-finding and to test the validity of empirical denials of subversion by a witness. Perhaps these people all met in New Hampshire at Appellant's camp just to smoke the pipe of international peace and brotherhood. Perhaps they did not. The Legislature of New Hampshire does not know. It has not yet been given even the elementary information it seeks in the principal case, of who was there. Reasonable, rational and sensible requirements of due process require no holding that the right of the State is to be thwarted by judicial creation of an individual right of privacy which extends even to protection against relevant responsible inquiry into *subversion*. The most vital of State interests is involved. A decision from this Court clearly affirming to the States of this Union the power to investigate *subversion* within their borders—reasonably, fairly, and yet firmly—is urgently needed for mutual security and common public advantage. We ask this not only for New Hampshire but for every other State in this Union. We ask it for the security, welfare and protection of the Union itself.

Certain decisions of this Court relied upon by Appellant in his brief as a bar to such inquiry as here at issue upon close analysis involve much dicta. This dicta if to become law of the land would weaken national and state security programs substantially and we believe unnecessarily.

Thus in disposing of *Watkins v. United States*, 354 U.S. 178, 1 L.Ed. 2d 1273, 77 S. Ct. 1173, much if not all of the majority decision relating to First Amendment rights was dicta. Whether or not Communism is un-American (which it most certainly is in the fullest sense of the word), all that was necessary to disposition in *Watkins* was to require that without writing the questions in advance the House and Senate Committees engaged in security investigation rewrite the resolutions empowering their

membership to act, so as to set forth more clearly precisely their charter. In *Konigsberg v. California*, 353 U.S. 252, 1 L.Ed. 2d 810, 77 S. Ct. 722, it was not essential to decision to say that there was no reasonable doubt about the good moral character of an applicant for admission to the California bar who refused to tell the bar examiners whether or not he was then a member of the Communist Party. The repeated assertions by implication and otherwise of dicta in *Konigsberg* that the Communist Party is a mere political organization on a par with and entitled to the same First Amendment protections as the Republican or Democrat or Socialist parties fly in the face of fact and in the teeth of history, past and present.

No greater invasion of the reserved powers of the States has ever been pronounced than in *Pennsylvania v. Nelson*, 350 U.S. 497, 100 L.Ed. 640, 76 S.Ct. 477, when the Constitution was interpreted to give to the federal government the power to take from the States their right to protect themselves. Again this extreme was unnecessary to resolve the case in the face of the trial record in Pennsylvania, which was replete with reversible error in the bitter exchanges between Steve Nelson and Judge Mussmano.

Moreover, in spite of Appellant's attempt to interject the segregation issue in the principal case (see Appellant's brief, p. 13), it is not involved here. Compulsory disclosure of membership in the NAACP is an entirely different proposition from compulsory disclosure of membership in an organization being investigated for *subversion* for reasons so obvious on this record as to require no argument.

Orderly investigation neither narrows, stultifies nor limits the fullest of free discussion, association, or debate of public issues at World Fellowship, Inc., or any other place. Communist activities throughout the United States should be constitutionally discouraged in the public protection. Appellant now seeks here a decision from this Court that the State of New Hampshire—and *a fortiori*, every other State in the Union—may not even investigate subversion (Communist activity) within the State with

the aid of compulsory process. It has been said that the matter of criminal proscription of such activity is for the federal government and that the F.B.I. stands ready to protect the States. Meaning no disrespect of that great, diligent and loyal body of federal agents, limited in number and burdened with many duties, the State of New Hampshire respectfully inquires what if they do not see fit to act? What if the Justice Department does not see fit to prosecute? Must each State stand idly by should Communist conspiracy within its borders grow and flourish? The law in this field should not remain so phrased that instead of encouraging partnership between the states and the federal government in the detection and regulation of threats to national and state survival, the States and the Federal Government must be at odds, or at arms length in security cases.

Such dicta gives encouragement to public acceptance of the concept that Communism in this country is something different than it is in every other country in the world. Contrary to the spirit of partnership in common cause—which the United States Department of Justice requested of this Court in its brief filed with this Court at this Court's request in *Commonwealth of Pennsylvania v. Steve Nelson*, 350 U.S. 497, 100 L.Ed. 640, 76 S. Ct. 477,—the law enforcement agencies of State and Federal Governments have been stripped of the power of partnership and denied common cause in reasonable protective investigative procedures. In this language is the seed of a new Federal paternalism in which the position of the States has been reduced to that of the stool pigeon in the field of criminal law. Apparently Appellant presses here for a new decision that all the States can do is tell the federal authorities of suspected subversion and if the federal authorities don't wish to act, it is just too bad.

The State of New Hampshire respectfully contends that this situation is not good for New Hampshire or for any other State. The confusion compounded by apparent encouragement of Communist activity and by the language of these dicta should be clarified and a reasonable firmness announced in dealing with a genuine threat to state and nation. It accomplishes nothing to deny its existence nor to pooh-pooh it as of negligible concern.

New Hampshire does not so view it. Surely a State is entitled to be concerned in regard to its own internal security.

In this cause we respectfully ask nothing more and nothing less than that the Legislature of the State of New Hampshire be permitted the information from Appellant that has been requested by the subpoenas presently before this Court. The information is readily available on 3 x 5 cards in the possession of the witness. It is ready in the form of correspondence with less than twenty persons.

While the witness says it is an unreasonable interference with his right of privacy, it should be noted that the witness was summoned as Executive Director of a voluntary corporation in his official capacity. The witness says there was no subversion, but as is well known subversion sometimes has a dulcet tone and a myriad of expressions. The State is entitled to know whether the witness here, whose own testimony of sympathetic association and work within many organizations cited as Communist-controlled or infiltrated, sought by the operation of his voluntary corporation in New Hampshire to aid the spread of Communism in New Hampshire.

Such an inquiry is reasonable. Freedom of speech and association in America today—1958—is not absolute in relation to the possible establishment within the States of spearheads of the International Communist apparatus. Positively, there is no room in our law within which to sanction freedom of Communist activity in New Hampshire from even *investigation* in the name of the First Amendment to the Federal Constitution.

The Communist Party has twice been found by a responsible governmental agency not to be a political party but to be the arm of a foreign criminal conspiracy. The Supreme Court in West Germany so held where the Party was outlawed by judicial decision of August 17, 1956. The second finding of criminal conspiracy of the American Communist Party by the Subversive Activities Control Board is now pending before this Court. This country may not have yet suffered the lot of Germany or South Korea, but the handwriting of International Communism is on the wall for all of us to read.

The right of one of the United States—and still a sovereign State—to reasonably investigate such activity within its borders is a power and right reserved to it under the U.S. Constitution which Respondent respectfully asks this Court to affirm in clear and decisive language.

ARGUMENT

I. THE STATE'S POWER TO INVESTIGATE IS FUNDAMENTAL.

A. *The fact-finding process is an indispensable adjunct to intelligent legislation.*

The power of the legislative branch to investigate in aid of legislation has never been seriously doubted.

Kilbourn v. Thompson, 103 U.S. 168, 26 L. Ed. 377, 13 Otto 168

McGrain v. Daugherty, 273 U.S. 135, 71 L. Ed. 580, 47 S. Ct. 319

Sinclair v. U. S., 279 U.S. 263, 73 L. Ed. 692, 49 S. Ct. 268

Journey v. McCracken, 294 U.S. 125, 79 L. Ed. 802, 55 S. Ct. 375.

Of all possible subjects of State legislation the most appropriate and most essential is that of self-preservation. It has long been held that the power to maintain internal security is the most basic element of sovereignty.

Gilbert v. Minnesota, 254 U.S. 325, 65 L. Ed. 287, 41 S. Ct. 125

Whitney v. California, 274 U.S. 357, 71 L. Ed. 1095, 47 S. Ct. 641

Gitlow v. New York, 268 U.S. 652, 69 L. Ed. 1138, 45 S. Ct. 625

Dennis v. U. S., 341 U.S. 494, 95 L. Ed. 1137, 71 S. Ct. 857

It is equally well recognized that the Federal Government and that of the several States may act seasonably in self-preservation and need not wait until a subversive group has perfected its plans and only the signal to strike remains. Appropriate action may be taken at the appropriate time. *Dennis v. U. S.*, *supra*; *Gitlow v. New York*, *supra*.

"Overthrow of the government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected. If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase 'clear and present danger' of the utterances bringing about the evil within the power of Congress to punish.

Obviously, the words cannot mean that before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt."

Dennis v. U. S., 341 U. S. 494, 509, 95 L.Ed. 1137, 1152.

It follows that the Legislature, through its appropriate committees, has the power to inquire into the general subject of subversion and the specific subjects of Communism and the Communist Party as an adjunct to its power to legislate with respect thereto.

American Communications Assn. v. Douds, 339 U. S. 382

Osman v. Douds, 339 U. S. 846

Galvan v. Press, 347 U. S. 522

Harisiades v. Shaughnessy, 342 U. S. 580

Carlson v. Landon, 342 U. S. 524

Adler v. Board of Education, 342 U. S. 485

Communist Party v. Subversive Activities Control Board,
223 F. 2d 531 (C.A.D.C.), reversed on other grounds,
351 U. S. 115, cf.

Dennis v. United States, 341 U. S. 494

Clearly then the investigation undertaken by the Attorney General acting as a constitutional one-man legislative committee was a valid exercise of authority by the New Hampshire Legislature dealing with a subject matter undeniably within its jurisdiction.

B. *The decision of this Court in Pennsylvania v. Nelson*,
350 U. S. 497, 100 L. Ed. 640, 76 S. Ct. 477 (1956)
has no application to this case.

That holding was directed at "suspending the enforceability" of State laws imposing criminal sanctions on subversive activity directed against the Federal government. All that is involved here is the right of a State to *investigate* in aid of state legislation. Nothing in *Pennsylvania v. Nelson* remotely purports to invalidate State legislative *investigations*. In fact in the *Nelson* decision this Court was quite careful to point out that it did not void provisions of State law insofar as they made it a crime in the States to attempt to overthrow the Federal government by

unlawful means but merely suspended their enforceability while the Federal *Smith Act* remained on the books. The decision in *Pennsylvania v. Nelson* did not invalidate or suspend State laws aimed at sedition or subversion against the *States* themselves. Chief Justice Warren, writing for the majority, expressly said:

"The precise holding of the Court, and all that is before us for review, is that the Smith Act of 1940, as amended in 1948 which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supercedes the enforceability of the Pennsylvania Sedition Act which proscribes the same conduct." 350 U.S. 497, 499.

Pennsylvania v. Nelson, supra, does not preclude the investigation undertaken by the Appellee pursuant to directive of the New Hampshire Legislature. It is respectfully asserted that Congress could not constitutionally supersede the reserved police power of the States to make it a crime to advocate or seek to overthrow the STATES themselves by force and violence. *U. S. Constitution, Tenth Amendment*. Deprivation of the ability to protect itself by the imposition of criminal sanctions directed toward the restraint of subversion of the State Government is a power not granted to the Federal Government in any part of the U. S. Constitution, expressly or by implication.

See: Note, 67 *Harvard Law Review*, No. 8, p. 1419.

The decision in *Yates v. U. S.*, 354 U.S. 298, 1 L. Ed. 2d 1356, 77 S. Ct. 1064, does not control the case at bar. *Yates* arose out of a prosecution for violation of the *Smith Act* and the reversal of conviction in the lower court revolved primarily around the definitions of certain terms in the *Smith Act*.

Moreover, the principal investigation is relevant to a great variety of legislation, none of which necessarily intrudes upon the area construed by this Honorable Court in *Pennsylvania v. Nelson, supra*, to have been preempted by Congressional enactment of the *Smith Act*. The results of this investigation might well lead to the enactment of State immunity laws, registration

statutes, legislation empowering a State agency to suspend or revoke the franchise of corporations engaged in subversive activities within a State, local measures to deal with subversive investigation of riots, insurrection or public disturbance, or any new or amended State legislation directed exclusively at attempts to overthrow the State government itself by force and violence, as distinct from subversion against the national government. In short, there is an infinite variety of permissible State legislation which might logically result from facts developed by the investigation at hand. Contemplation of these possibilities clearly illustrates why this Court in its wisdom confined the decision in *Pennsylvania v. Nelson* to sedition directed against the United States, as well as why principles of that case should not be extended to cover a State investigation.

It is not essential to show that legislation has actually been recommended by a committee to prove that it has been pursuing a valid legislative purpose.

United States v. Josephson, 165 F.2d 82, 89-90, certiorari denied, 333 U. S. 838.

Townsend v. United States, 95 F. 2d 352, 355, certiorari denied, 303 U. S. 664.

The committee might well find, as a result of its investigation, that no legislation is required or even that existing legislation is unnecessary.

See: Landis, "Constitutional Limitations on the Congressional Power of Investigation" 40 *Harvard Law Review* 153, 208-209; 217-218 (1926)

It is sufficient that some valid legislation could ensue from an inquiry. *McGrain v. Daugherty*, 273 U.S. 135, 177; *Sinclair v. United States*, 279 U. S. 263, 295; *Barsky v. United States*, 167 F. 2d 241, 245, (C.A.D.C.), certiorari denied, 334 U.S. 843. See also Brief for the United States in *Flaxer v. United States*, No. 60, this Term. at pp. 38-40, 49-50.

Legislation has in fact been recommended and enacted resulting from the principal investigation. See: Report of Attorney General to New Hampshire General Court, January 5, 1955; New Hampshire Laws 1955, chaps. 181, 312; New Hampshire Laws 1957, chap. 178.

It is clear that the mere possibility that unconstitutional legislation might eventuate from an otherwise legitimate legislative inquiry cannot invalidate the inquiry itself. *Barsky v. United States*, *supra* at 245, *United States v. Josephson*, 165 F. 2d 82, 91-92 (C. A. 2), certiorari denied 333, U. S. 838.

The fact that the inquiry goes into the question of names of individuals does not invalidate it. "If Congress has the power to inquire into the subjects of Communism and the Communist Party . . . it has power to identify the individuals who believe in Communism and those who belong to the Party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. *Personnel is part of the subject*. [Emphasis added.] *Barsky v. United States*, *supra* at 246.

II. THE SUBPOENAS ARE RELEVANT.

A. *The association and activities with Communist, Communist-infiltrated, and Communist-controlled organizations on the part of the witness and of many known speakers or guests at World Fellowship, Inc., are demonstrated in the record.*

The range of questioning and of information and materials sought is always subject to the requirement of relevancy.

U. S. v. Ormán, 207 F. 2d 148 (1953)

U. S. v. Josephson, 165 F. 2d 82 (1947)

U. S. v. Rumely 345 U. S. 41 (1953)

Barenblatt v. U. S. 100 App. (DC) 13, 240 F. 2d 875

McGrain v. Daugherty, 273 U. S. 135 (1927)

In re Chapman, 166 U. S. 661 (1897)

See Liacos, "Rights of Witnesses before Congressional Committees" 33 *B. U. Law Review* 337 (1953)

The relevancy of questions asked by an investigating committee is not to be determined solely by the standards applicable at the trial of issues in court "because of the scope and purpose of (legislative) investigations, pertinency . . . is necessarily broader than relevancy in the law of evidence." *U. S. v. Orman*, 207 F. 2d 148, 153. If the question asked or material sought is directed at a possible answer which would be reasonably concerned with the main object of the investigation, it is relevant. *U. S. v. Orman*, supra at 154; see also *Sinclair v. U. S.* 279 U.S. 263, 299.

The State Supreme Court in the instant case found the information sought by Appellee's subpoena of the guest registration list and the correspondence with or concerning speakers at the Center was clearly relevant to the legislative inquiry. *Wyman v. Uphaus*, 100 N. H. 436. (See Appendix A) So did the Superior Court after full hearing and before the witness was directed by the Court to respond to the subpoenas here in question.

One of the duties of the legislative committee under its precept in the principal case (*New Hampshire Laws 1953, chapter 307*) was to determine whether or not any subversive organization or persons might be found in the State of New Hampshire. RSA 588, section 1 defines "subversive person" as:

" . . . any person who commits, attempts to commit or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence . . ." (emphasis added)

By the subpoenas in this case the Attorney General sought to determine if such persons might be found in the State of New Hampshire. The definition of "subversive person" is carefully delineated in the statute. It is not a "Watkins" statute. Cf., *Watkins v. U. S.*, 354 U.S. 178, 1 L. Ed. 2d 1273, 77 S. Ct. 1173. Request for the names of those in attendance at World Fellowship, Inc., could not be more pointedly related to the discovery of such persons. The principles of *Wieman v. Updegraff*, 344 U.S. 183, 97 L. Ed. 216, 73 S. Ct. 215, are not applicable. *Wieman* involved a prosecution (not an investigation) wherein a State law sought to attach criminal penalties to innocent and unknowing activity. In no manner does the basic New Hampshire statute do this. RSA 588. Investigation is not prosecution. The witness is not a criminal defendant except insofar as he has refused to honor the subpoenas in question and thereby committed a contempt of the Superior Court of Merrimack County, New Hampshire.

B. *The materials called for by the subpoenas are neither burdensome nor indefinite.*

The subpoenas before this Honorable Court each cover only a period of less than one year preceding their issuance. They are limited to the summer season and activities of World Fellowship, Inc., of which Appellant is the Executive Director. They call for names of registrants and a guest registration list which is in existence in readily available form on 3" x 5" cards. Correspondence called for by the subpoenas is particularly described as being that between the Executive Director and persons who participated as leaders of discussions, panels, or principal speakers at World Fellowship, Inc., over a period of but a few weeks. Nothing in the subpoenas is unreasonable as to time, place or persons.

See, *Annotations* 58 A.L.R. 4263.

58 *Am. Jur.*, "Witnesses" ss. 20, 21, 25

70 C.J. 50, "Witnesses" s. 37

III. COMPLIANCE WITH THE SUBPOENAS DOES NOT VIOLATE THE FIRST OR FOURTEENTH AMENDMENTS.

A. *The New Hampshire Legislature desires the information requested by the subpoenas.*

In the case of *Sweezy v. New Hampshire*, 354 U.S. 234, 1 L. Ed. 2d 1311, 77 S. Ct. 1203, this Honorable Court was evenly divided on the question of the scope of the Attorney General's authority. The principal opinion stated that:

"The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued; what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the Attorney General to gather the kind of facts comprised in the subjects upon which the petitioner was interrogated"

"The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from the petitioner must be treated as the absence of authority. It follows that the use of the contempt power, notwithstanding the interference with Constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment."

The concurring opinion, however, took issue with this reasoning:

"In assessing the claim of the State of New Hampshire to the information denied it by petitioner, we cannot concern ourselves with the fact that New Hampshire chose to make its Attorney General in effect a standing committee of its Legislature for the purpose of investigating the extent of 'subversive' activities within its bounds. Similarly, whether the Attorney General of New Hampshire acted within the scope of the authority given him by the State Legislature is a matter for the decision of the courts of that

State, as it is for the Federal courts to determine whether an agency to which Congress has delegated power has acted within the confines of its mandate. See *U. S. v. Rumely*, 345 U.S. 41, 97 L.Ed. 770, 73 S. Ct. 543. Sanction of the delegation rests with the New Hampshire Supreme Court and its validation in *Nelson v. Wyman*, 99 N. H. 33, 105 A2d 756, is binding here."

6 The dissenting opinion agreed with the concurring opinion in this regard:

"They [the Justices sharing the principal opinion] hold that the appointment of the Attorney General to act as a committee for the Legislature results in a separation of its power to investigate from its responsibility to direct the use of that power and thereby causes deprivation of the constitutional rights of individuals and a denial of due process . . . This theory was not raised by the parties and is, indeed, a novel one."

"My Brothers Frankfurter and Harlan do not agree with this opinion because they conclude, as do I, that the internal affairs of the New Hampshire State Government are of no concern to us. See *Dreyer v. Illinois*, 187 U. S. 71, 84, 47 L.Ed. 79, 85, 23 S. Ct. 28 (1902)."

Assistant Professor Cramton of the University of Chicago Law School in his article entitled "Limitations on State Power to Deal with Issues of Subversion and Loyalty" had this to say with respect to the *Sweezy* case:

"The most puzzling aspect of the *Sweezy* case is the reliance by the Chief Justice on delegation of power conceptions. New Hampshire had determined that it wanted the information which *Sweezy* refused to give; to say that the State has not demonstrated that it wants the information seems so unreal as to be incredible. The State had delegated power to the Attorney General to determine the scope of inquiry within the general subject of subversive activities.

Under these circumstances the conclusion of the Chief Justice that the vagueness of the resolution violates the due process clause, must be, despite his protestations, a holding that a state legislature cannot delegate such a power."

This quotation was cited with approval in the Report of the Committee on Federal-State Relationships as Affected by Judicial Decisions adopted by a 36 to 8 vote by the 1958 Conference of Chief Justices.

As a practical matter the New Hampshire Legislature specifically answered the question as to whether or not the Attorney General's inquiries into the Sweezy case were directed towards information desired by them on July 12, 1957, when by more than a two-thirds vote, the General Court of New Hampshire adopted the following resolution:

"Senate Joint Resolution
relative to interpretation of legislative intent
on subversive activities.

"Whereas, the attorney general has for several years been conducting a fact-finding investigation of subversive activities in New Hampshire for the General Court pursuant to law, and

Whereas, by the laws of this state the attorney general for these purposes has been found by the Supreme Court of New Hampshire to be a constitutionally delegated legislative committee of this body, and

Whereas, in the course of the aforesaid investigation one Paul M. Sweezy refused to respond to questions of the attorney general which questions and report thereof was made by the attorney general to this legislature on January 5, 1955, and

Whereas, in decreeing the questions put to Sweezy were put without authority the United States Supreme Court on June 17, 1957 stated that

'The lack of any indications that the Legislature wanted the information the attorney general attempted to elicit from petitioner must be treated as the absence of authority.'

"Now therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That this general court is, and for a long time has been, familiar with the questions put to Paul M. Sweezy by the attorney general acting in this State, authorized these questions, wanted and continues to want the information which is sought by these questions, and has enacted this resolution for the specific purpose of removing the doubt which has been expressed by the United States Supreme Court '... neither we nor the State Courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the Legislature wanted to be informed when it initiated this inquiry.'"

If it be contended that this Resolution purports to operate retroactively, it is nevertheless incontrovertible evidence of the intention of the Legislature with regard to the principal inquiry, which is an uninterrupted continuation of the same legislative investigation since 1953. It is important to note that the principal opinion in *Sweezy* rests entirely upon a determination that:

"the lack of any indication that the Legislature wanted the information the Attorney General attempted to elicit from the Petitioner must be treated as the absence of authority."

What stronger indication of the Legislature's intent could exist than a specific statement thereof by the Legislature itself? The authority of the Committee (Attorney General) is a continuing matter (New Hampshire Laws 1957 Chapter 347) and the General Court has directed that it "continues to want" the information in question.

The New Hampshire Supreme Court entertained no doubts as to the intention of the Legislature with regard to the Attorney General's scope of authority,

"The legislative history makes it clear beyond a reasonable doubt that it [the Legislature] did and does desire an answer to these questions. Laws 1957, Chapter 347 Approved July 11, 1957. We believe that the legislature was entitled to the information sought." *Wyman v. Uphaus*, 101 N. H. 139.

The decision in the *Sweezy* case fundamentally differs from the case at bar in several respects. This case does not concern itself with the classroom. Both the principal and concurring opinions in *Sweezy* express concern lest the investigation might interfere with the academic process. No such consideration need enter the decision in this case.

The *Sweezy* decision in part concerned questions having to do with Communist influences within the Progressive Party. The concurring opinion considered this to be a pivotal point and concluded that insufficient evidence existed in the record which would justify the conclusion that the Progressive Party constituted a danger to the security of New Hampshire. This case is not related to the Progressive Party. It has to do with the production of certain correspondence and a guest registration list of Petitioner's state-incorporated public camp. In this connection it is worthy of note that since 1927 a provision has been in force in the State of New Hampshire, specifying as follows:

"All hotel keepers and all persons keeping public lodging houses, tourist camps, or cabins shall keep a book or card system and cause each guest to sign therein his own legal name or name by which he is commonly known. Said book or card system shall at all times be open to the inspection of the sheriff or his deputies and to any police officer." New Hampshire Revised Statutes Annotated Chapter 353, section 3.

For thirty-one years this statute has been on the books in New Hampshire and undoubtedly similar provisions are in force in most of the forty-eight States. No one during that entire period has seriously questioned the constitutionality of this rather innocuous law which operates in the public interest. Certainly if any power were within the scope of a simple police regulation this is such a power. Any deputy sheriff or local police officer is entitled to the same information as that sought by the Attorney General of the State of New Hampshire acting in pursuance of a direct order of the entire legislative assembly of that State. Appellant's position that New Hampshire must afford those who seek to subvert and overthrow the State a constitutional government immunity from the equivalent of one of New Hampshire's police regulations is patently outrageous.

- B. *Reasonable and rational balancing of the interests of State security and individual rights requires that in the limited circumstances of the principal case the witness produce the information called for.*

In *Sweezy v. New Hampshire*, 354 U.S. 234, the principal opinion declared that it did not need to consider the fundamental question of whether "the menace of forcible overthrow of the government justified sacrificing constitutional rights." The concurring opinion on the other hand held that the true question in that case involved "... a judicial judgment in balancing two contending principles—the right of a citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection." The opinion went on to state that "it [the decision] must rest on fundamental presuppositions rooted in history to which widespread acceptance may be firmly attributable." Thus has this Court clearly indicated the principal issue which the present case must determine. The fundamental question is whether or not the invasion of petitioner's rights (if the subpoenas in this case can be so deemed) is justified by the danger with which the State finds itself faced. The concurring opinion in *Sweezy* takes a long step towards answering

this question. There it was strongly intimated that at least a portion of this Court recognizes the menace to the free world presented by International Communism.

"... on the basis of massive proof and in the light of history of which this Court may well take judicial notice be the justification for not regarding the Communist Party as a conventional political party . . ."

The concurring opinion went on to point out that such proof and history were not available with regard to the Progressive Party and therefore reached the conclusion that the questions asked in the *Sweezy* case relative to the Progressive Party were not justified by the State's interest in self protection. We continue to believe that a careful examination of the record in that case evidenced such justification. In the case at bar, however, the facts occur in a different setting. This case does not concern itself with the classroom nor with the Progressive Party or any other recognized political party. The distinction between the Communist Party and the Progressive Party is vital. Whatever view one may have as to the character of the Progressive Party as a legitimate political party the Legislature has the gravest of reasons for not considering the Communist Party as a political party in the conventional and accepted sense.

"From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system." *American Communications Ass'n. v. Douds*, 339 U. S. 382, 424.

Its goal is "to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate" (id., 425; italics in the original). It "purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship" (ibid.). It is

"designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government" (*ibid.*) "*Violent and undemocratic means are the calculated and indispensable methods to attain (its) goal*" (339 U. S. at 429; italics in the original). It is "a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed" (at 432). Each member "pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded" (*ibid.*). It, moreover, "*alone among American parties past or present is dominated and controlled by a foreign government. It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands*" (at 427; italics in the original).

The United States Congress in the Communist Control Act of 1954, c. 886, §2, 68 Stat. 775, 50 U.S.C. (Supp. V) 841 stated its reasons for not considering the Communist Party as simply "another political party".

"The Congress finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the World Communist movement. Its members have no part in determining its goals, and are

not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services."

This formal expression by Congress of its views respecting the Communist Party is manifestly entitled to great weight in any judicial appraisal of the validity, under the First Amendment, of a legislative inquiry.

The special nature of the Communist Party, the special dangers it represents, and its special and unlawful aims, justify inquiry into an individual's connection with that Party where other political queries would be inadmissible. This principle the Court has explicitly recognized. *Lerner v. Casey*, 357 U.S. 468, 477-478. It is too late in the twentieth century to treat Communist Party membership as if it were of the same type and order as membership in the Republican Party, Democratic Party, or the Socialist Party. The established fact is that Com-

munist affiliations are on a wholly different plane because the Communist Party is wholly different—and this Court has never held otherwise.

The information sought by the Attorney General (committee) here deals with a group of persons connected with an organization which Petitioner described in high-sounding, self-serving terms (*Wyman v. Uphaus*, 100 N. H. 436, 438) *but the true nature of which is the very point under investigation by the State*. Information in the hands of the Attorney General and a matter of record in this case clearly indicates that World Fellowship, Inc. was in all probability a breeding ground for the precise type of activity at which the New Hampshire Legislature aimed its investigation. The weight of this evidence was such that the New Hampshire Supreme Court upon careful consideration concluded that:

“we believe this contention [that the guest list and correspondence did not contain any information relative to subversion] so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Attorney General and the law applicable to the same.” *Wyman v. Uphaus*, supra, at 494, citing *Flaxer v. U. S.*, 235 F.2d 821; *Marshall v. U. S.*, 176 F.2d 473; *Morford v. U.S.* 176 F.2d 54.

Specifically what does the record reveal with respect to the need of the State for this information?

1. That the witness, Willard Uphaus by his own testimony has been a member or sponsor of many organizations which persons in positions of responsibility in the United States have believed to be Communist infiltrated or Communist controlled, and hence at the very least potentially subversive within the language of the New Hampshire statute under which the present subpoenas were issued. (See Appendix A)

2. That the witness, Uphaus, by his own testimony did not know whether many of the individuals attending World Fellowship, Inc. during 1954 and 1955 were presently or had been in the past members of the Communist Party and/or members of organizations cited as subversive and Communist controlled, and never inquired into their "political affiliations".
3. That among those whom the record shows attended and spoke at World Fellowship, Inc., were: Dirk Struik, Julian Shuman, John Pratt Whitman, Florence Luscomb, Janet Sharp, Anne Winston, Carl Ryan, Thelma Dale, J. Franklin Pineo, Ruth Crawford, Richard Morford, Mary Jane Keeney, Helen and Scott Nearing, etc., many of whom have substantial public records of membership in organizations repeatedly cited as subversive or Communist controlled. (See Appendix A)
4. That there are files of correspondence with persons invited to speak at World Fellowship, Inc. which the witness recognized as under *subpoena duces* "regardless of whether the correspondence was with (a person who) . . . was or was not a Communist." (T: 75)

It is important to observe that the bulk of the evidence relied upon by the New Hampshire Supreme Court in its decision was taken directly from petitioner's own testimony. Even a cursory examination of this testimony will reveal unmistakable indications of the probable presence at World Fellowship, Inc. of persons with exactly such information as the legislative inquiry so obviously seeks.

As a matter of practical application the balancing process referred to by the Court in *Sweezy* fairly requires consideration of the fact that a certain amount of preliminary investigation is essential in order to determine the existence and extent of a suspected danger.

See: Note, "The Supreme Court, 1956 Term", 71 *Harvard Law Review* 146.

If examination of the guest list were to disclose Communist agents hitherto unknown or lead to the discovery of a plan of sabotage or uncover an organization actively engaged in espionage for a foreign power, the State's interest would be deemed clear and uncontrovertible. The danger in such circumstances to the State would undeniably justify almost any intrusion by relevant question and required answer.

Every indication points to the conclusion that World Fellowship, Inc. is an incubation spot for precisely this type of activity yet Appellant seeks from this Court a decree that The State of New Hampshire is not entitled to even the names of those in attendance. Careful preliminary investigation is as essential a step in the security of State and Nation as the production of arms and the maintenance of a standing army.

The courts have been mindful that a legislative inquiry need not be restricted to those facts which prove the need for new legislation or for modification of existing laws; nor is it limited to the precise area which the legislative body has power to regulate. The power to investigate must necessarily be broader than the substantive authority which may eventually be exercised by the investigating body, for not until the whole body of facts has been canvassed can it be determined where the definite boundaries of regulation should be drawn. It is just as important for the Legislature to be informed of facts which show proposed or possible legislation would be undesirable or unnecessary, as it is for it to know the circumstances calling for affirmative action. In many areas, such as those impinging on freedom of speech or other constitutionally protected rights the legislative power may even depend upon the existence, or non-existence, of facts which can only be uncovered through a legislative inquest.

Judicial inquiry into a committee's "legislative purpose" should therefore not be restrictive or hostile, but must take account both of the powers of the legislature and of its pressing need to inform itself broadly. The latitude is necessarily wide. As was stated in *Townsend v. United States*, 95 F. 2d 352, 361 (C.A.-D.C.), certiorari denied, 303 U.S. 664:

A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress. *McGrain v. Daugherty*, 273 U.S. 135. . . . A judicial inquiry relates to a *case*, and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates *all possible cases* which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad. (Emphasis in the original.)

"Clearly," as was observed in *United States v. Josephson*, 165 F. 2d 82, 92-95 (C. A. 2), certiorari denied, 333 U. S. 838, "the Congressional power to investigate is as flexible as its power to legislate, once the latter power is established."

Thus, if this Court is to undertake a balancing between Appellant's rights and the danger to the State, it is only fair to the State to recognize that the reality and seriousness of the danger it seeks to analyze and assess is the very subject under investigation by the State. All that the State is able to present to the Court are those indications which led it to undertake the investigation in the first instance. At this stage of proceedings it is unreasonable to expect or require proof positive of espionage, sabotage, treason or criminal conspiracy constituting a serious menace to the State, for if such evidence were in the hands of the State this would not be an investigation but a prosecution or at the very least an information to the Department of Justice. It is appropriate that determination be made whether the information in the hands of the State reasonably justified the suspicion that the activities at Appellant's camp were subversive and therefore might constitute a danger to the State. Yet a State must not be forced to wait until a danger has become *fait accompli*, but must be permitted to administer that ounce of prevention (or at the very least *detection*) which is the *raison d'être* of this investigation.

There is nothing shadowy or remote in the threat to the security of New Hampshire and that of each of the several States as well as the Federal Government presented by the presence

within its borders of persons whose entire record indicates consistent support of, and affiliation with Communism from the Communist Party to Communist-infiltrated and front organizations. Consideration of the aims of International Communism cannot fail to make manifest a serious threat to any and all political subdivisions of a free society in such activity. Any other conclusion would not constitute a realistic appraisal of the Communist *modus operandi*.

Current developments on the international as well as the national scene resoundingly justify the concern of The State of New Hampshire in what is going on at World Fellowship, Inc. As the "cold war" erupts from time to time across the face of this troubled world into shooting war in Quemoy, Matsu and Formosa and in the Middle East, and not so long ago in the bloody Hungarian Revolution, and in other incidents too numerous to name, the role played by Communists working through international subversion can not be ignored.

The New Hampshire General Court does not look upon the question of Communism and Communist Party activity within the State as some kind of conventional political association or mere political activity. We are unwilling to risk inactivity or non-activity by Federal authorities. We sincerely feel that the States must have the right to make subversive advocacy a crime within the State and on the State level, no matter whether the Federal Government does or not. We feel that New Hampshire as a separate and sovereign State still retains *some* of the rights reserved to the States under the *Tenth Amendment*. We feel that if any rights at all are reserved to the States thereunder, that the most basic is the power to investigate and control subversion and to compel answers to fair, reasonable, courteous and relevant questions such as are involved in the subpoenas before this Honorable Court. See Appendix B for Rules of Procedure used in the principal investigation.

It is impossible to rationally maintain that the information sought is not pertinent. It is impossible to rationally conclude that no interest in The State of New Hampshire in its survival warrants the miniscular limitations on absolute freedom of speech

that are claimed by Appellant here. Daily faced with the risk of war with International Communism, it is submitted that a reasonable balance of the State's interest and the individual's rights can have no other conclusion than a decision in favor of Appellee on this record.

IV. AN ORDER OF CONFINEMENT UNTIL COMPLIANCE WITH THE COURT'S ORDER, WHEN SUCH COMPLIANCE IS POSSIBLE TO THE WITNESS AT ANY TIME, IS NOT A CRUEL NOR UNUSUAL PUNISHMENT.

The use of contempt power of the State's Superior Court in this situation is appropriate and apt. Although liable to abuse, contempt power is essential to the protection of the courts in the discharge of their functions. Without it judicial tribunals would be at the mercy of the disorderly and violent who respect neither the laws enacted for the vindication of public and private rights nor the officers charged with the duty of administering such laws.

Ex Parte Terry, 128 U. S. 289; 313 (1888)

12 *Am. Jur.* "Contempt" s. 40

17 *C.J.S.* "Contempt" ss. 43, 106, 109

This Court has recognized the power of lower courts to impose conditional imprisonment for the purpose of compelling compliance with court orders.

"We agree that the court had power to coerce obedience to those orders and to subject defendants to such conditional sanctions as were necessary to compel obedience. . .

This power is of ancient lineage, [footnote omitted] has always been recognized by our courts, and has the express recognition of Congress under the name of contempt. Rev. Stat. § 725, 28 U.S.C.A. §. 385, 8 F.C.A. Title 28, §.385. Where the court exercises such coercive power, however, for the purpose of compelling future obedience, those im-

Footnote: Mr. Justice Black went on to disagree with the principal opinion on other grounds, but it should be noted that with regard to the issue at hand he was in accord with the majority opinion.

prisoned "carry the keys of their prison in their own pocket." *Re Nevitt* (CCA 8th 117 F.448, 461;) by obedience to the court's valid order, they can end their confinements; and the court's coercive power in such a 'civil contempt' proceeding ends when its order has been obeyed. *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 441-445, 55 L.Ed. 797, 805-807; 31 S.Ct. 492, 34 L.R.A. (N.S.) 874."

U. S. v. United Mine Workers of America, 330 U. S. 258, 330-332; 91 L.Ed. 884; 67 S.Ct. 677, 713-714 (dissenting opinion)

More recently, in *Green v. U. S.*, 356, U.S. 165, 2 L. Ed. 2d 672, 78 S. Ct. 632, 650, Mr. Justice Black found occasion to dissent from the principal opinion, but once again agreed with the majority on the basic proposition that courts may impose conditional imprisonment in the exercise of contempt powers.

"Before going any further, perhaps it should be emphasized that we are not at all concerned with the power of courts to impose conditional imprisonment for the purpose of compelling a person to obey a valid order. Such coercion, where defendant carries the keys to freedom in his willingness to comply with the court's directive, is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees." *Green v. U.S.*, supra.

Appellant argues that the conditional imprisonment imposed in the instant case "constitutes cruel and unusual punishment because "he was not actuated by self-interest or disrespect for the judicial process" in refusing to comply with the Court's order to produce the material requested. Appellant's motives though attested by self-serving statements, are questions of fact for the determination of the trial court and not for consideration on appeal.

Appellant has never been confined. An order that appellant stand committed until purged of contempt is in conformity with settled practice over the years. Such orders are constantly made

in equity proceedings. They are peculiarly apt to the situation presented to the New Hampshire Supreme Court on January 5, 1956, by respondent's willful contumacy. Appellant in any such formula holds the key to his own dilemma. He is not being forced to talk himself into jail nor into a prosecution. He has never claimed the privilege against self-incrimination. It is unreasonable to give credence to assertions that a claim of stigma attached which is in the nature of an odium. If there is any stigma here (which is perforce moral and not legal in any event) it is directly attributable to appellant's own activity, to his own free choice in life and to an unlawful and unreasonable defiance of the General Court of The State of New Hampshire.

CONCLUSION

There is no sound legal or moral reason why any person in New Hampshire or in any other of the United States should not be required to appear and to testify relative to knowledge of subversive activity, whether on the part of himself or on the part of other persons to his knowledge. If any principle of law can be said to have developed from this and similar investigations, spawned of better understanding by state and nation of the real purposes of world Communism, it is the principle that one of the obligations of American citizenship is to take the witness stand at any time and answer under oath relevant questions involving loyalty to state or nation. If in the course of such questioning there are claims that truthful answers would tend to incriminate, or claims that the particular questioning by manner or method peculiar unto itself violates other constitutional rights, problems thereby raised should never be permitted to cause us to lose sight of one of the most fundamental obligations of citizenship, whether in this decade or a thousand years ago—to tell the truth under oath when questioned concerning loyalty of the witness or loyalty of others within his knowledge.

The New Hampshire legislative investigation has not been concerned with liberalism no matter how liberal; with genuine socialism of the lawful Norman Thomas type no matter how

contrary in theory to prevailing practices of free enterprise; nor with honest dissent from existing social mores or institutions in any form short of subversive doctrines. However, all these things are a part of a spectrum of freedom of speech which, when viewed through a legal prism, approaches a definitive point beyond which the supreme legislative authority has constitutionally said citizens may not pass without breaking the law. A very considerable amount of questioning is absolutely essential to focus the legislative formula upon individual conduct which involves that part of the spectrum very close to the line of unlawful subversive conduct. Only through such questioning is it possible to be able to report to the Legislature whether the activity of a given individual has been subversive or not subversive; whether or not intentionally so or knowingly so on his part.

The witness is not being persecuted. He is not a defendant except for reason of contempt of a court order. He holds the keys to his own dilemma. The information sought by the subpoena is relevant to a vital concern of The State of New Hampshire and is directed to an activity on this record overwhelmingly infiltrated by Communists, fellow-travellers, or sympathizers. Being an investigation of possible subversion against the State, there is involved no question of First Amendment rights nor room to invoke the principles enunciated in *U. S. v. Rumely*, 345 U. S. 41, or other cases relating to investigation of lobbying, cartel or interstate commerce. The New Hampshire subversive activities law is constitutional. It is definite. It is carefully written as is the resolution empowering the committee (Attorney General) to investigate. In these circumstances the State of New Hampshire respectfully requests this Court to confirm its right to this information, which the Legislature clearly wants and continues to want and which in no way either stultifies free expression, any genuine freedom of religion, or freedom of assembly, nor otherwise unreasonably interferes with the witness' private life.

Balancing the interests of privacy against the interests of State Security on the record presently before this Court, it is



only fair and reasonable to conclude and hold that in these narrow circumstances this information is relevant to a vital concern of the State and does not abridge any reasonable construction of constitutional rights of Appellant.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

Louis C. Wyman
Attorney General

APPENDIX A

Information Developed at Hearing in Executive Session Held at
State House, Concord, N. H., on June 3, 1954

Pursuant to New Hampshire Laws of 1953, Chap. 307

<i>Organization</i>	<i>Uphaus' Relation to Same</i>	<i>Transcript of Hearing Page No.</i>
National Religion and Labor Foundation	Executive Secretary— 1934 to 1950 of 1951	9, 45
American Peace Crusade	National co-director, for two years starting in July 1951 until about Mar. 1952. Member of Resident Board	10, 12, 23, 38
World Fellowship	Executive Director — 1953	11
National Council on American-Soviet Friendship	Contributor	12

<i>Organization</i>	<i>Uphaus' Relation to Same</i>	<i>Transcript of Hearing Page No.</i>
National Committee for the Protection of the Foreign Born	Contributor	12, 24, 25
Citizens Committee for Harry Bridges (cited as a Communist organization by the Attorney General of the U.S. in 1949)	Sponsor in 1941	16, 17
American Friends of Spanish Democracy	Committee member	18
American Society for Technical Aid for Spanish Democracy	"probably a committee member"	20
Rosenburg Case	Signed a petition for clemency	20
National Committee for Peace	Director for one conference in Washington	20
"New World Review" (formerly "Soviet Russia Today")	Wrote one, possibly two articles for same	21, 22
Civil Rights Congress	Attended public meetings in New York	24
Christian Socialist	Member of party	27
World Council of Peace World Peace Congress	Member, appointed in Nov. 1950—was in Russia for 10 days then	31, 32

<i>Organization</i>	<i>Uphaus' Relation to Same</i>	<i>Transcript of Hearing Page No.</i>
Interfaith Committee for Peace Action in N. Y. City	Organized Sunday peace vigils	35
Labor Committee to Combat German Rearmament	Supported committee	41
Congress of People for Peace	Name appears on sponsoring committee letterhead	43
Second World Peace Conference	Attended conference and expenses paid by U.S. Sponsoring Committee to get representation at Warsaw Congress; also attended First Conference in Warsaw—expenses paid by same Committee	45
Mid-Century Peace Conference	Directed same	60
Protestant Digest	Editorial advisor— "maybe I was"	83

See Page 47 of Transcript where Attorney General read a list of organizations, as follows, in which he had reason to believe Uphaus had been active in:

National Committee to Repeal the McCarran Act

o National Peace Referendum—sponsor, press release Aug. 1952

Citizens Victory Committee for Harry Bridges

Conference on Peaceful Alternatives to the Atlantic Pact
 Methodist Federation for Social Action (official ballot)
 Appeal for Amnesty for Eleven Communist Party Leaders
 Melish v. Holy Trinity Church et al in Brooklyn, Sup. Ct.

of U. S., Amicus curiae brief of clergy.

"Report on Communist Peace Offensive"

W.E.B. DuBois Testimonial Sponsoring Committee, sponsor

Delegates' National Assembly for Peace, initial sponsor

Mid-Century Conference for Peace, sponsor

American Friends of Spanish Democracy—on letterhead

Delegates' National Assembly for Peace—signer of call

U. S. Sponsoring Committee for Representation at Congress
 of the Peoples for Peace—acting for committee

Rosenberg Clemency appeal—signer

U. S. Sponsoring Committee of the American Inter-

Continental Peace Conference—name on letterhead

People's Institute of Applied Religion—sponsor, letterhead

Methodist Federation for Social Action

National Committee for Peaceful Alternatives

Interfaith Committee for Peace Action

Uphaus did not deny his association with any of the above.

Some of the Known oft-cited Guests and Speakers at World
 Fellowship, Inc.

Dirk Struik

Richard Morford

Florence Luscomb

Ruth Crawford

Prof. Daggett

Prof. Reid

Rev. Abbe

Anne and John Wickman

Rev. Muir

Dr. Roberts

Rabbi Bick

Dr. Kingsbury

Bert MacLeach

Paula MacLeach

Rev. S. Modak

Joseph Hellinger

Dr. Dryden Phelps

Huberman

Joliot-Curie

Izzy Stone

Anna L. Strong

Nathaniel Mills

APPENDIX B

Note: The following Rules of Procedure were adopted by the Attorney General and are applicable to the testimony given by Uphaus at both hearings.

RULES OF PROCEDURE

Investigation of Subversive Activities

Laws of 1953, Chapter 307
New Hampshire

July 1, 1953 *

Explanatory Note

Laws of 1953, chapter 307, providing for the investigation of subversive persons and activities within New Hampshire, authorizes the conduct of hearings at which testimony under oath may be required from anyone in New Hampshire. Conceivably this testimony may raise constitutional questions and other legal problems affecting the rights of witnesses, and to eliminate confusion as to the extent and nature of these rights, to clarify the manner of conduct of hearings under chapter 307, the following RULES OF PROCEDURE are published in advance of hearings. It should be recognized that these RULES OF PROCEDURE ARE SUBJECT to modification at any time.

RULES

1. *Executive Session.*

Witnesses in all cases will be first advised of the contents of Laws of 1953, chapter 307, and of their constitutional privilege against self-incrimination. Insofar as is possible, examination of witnesses will be conducted in executive session. *Hearings will not be held in public unless requested by the witness.* Transcripts

* as amended May 5, 1954.

of testimony taken in executive session will be made public only when in the opinion of the Attorney General, in each individual case, such publicity is required to effectuate the purposes of Laws 1953, chapter 307. [emphasis added]

2: *Right to Counsel.*

At either executive or public hearings, every witness may have counsel of his own choosing, if desired. Whenever questioned under oath by the Attorney General or any duly authorized member of his staff, a witness shall, prior thereto, be informed of this privilege of counsel. Attorneys not members of the bar of the State of New Hampshire will not be recognized as counsel unless they are associated with a member of the bar of this state in good standing and this associate member of the bar of the State of New Hampshire, in good standing shall be present at all times during any hearing, either executive or public, at which a witness requests to be represented by counsel.

3. *Participation of Counsel.*

On behalf of a witness to whom he is counsel, an attorney shall have the right to participate in hearings as follows:

- (a) to advise the witness of his legal rights;
- (b) to make legal objection to questions and procedures and to submit brief statements in support of such objections, which may be either oral or in the form of memoranda, in which latter event such memoranda may be later filed for record;
- (c) although witnesses are not parties and are not entitled of legal right to cross-examine other witnesses, counsel may submit to the Attorney General or to such other authorized member of his staff conducting the hearing, written questions directed to witnesses testifying as to relevant facts substantially derogatory to the reputation and character of his client;

NOTE: This confers no right upon counsel to be present at an executive session (private hearing) when his own client is not testifying, but is confined to public hearings at which testimony is given by others derogatory to his own client; it further confers no absolute right that the questions so written shall be presented if determined by the Attorney General to be irrelevant, scurrilous insulting or impertinent.

- (d) to submit as part of the record a written statement of his client, explaining or refuting testimony relating to his client, provided such statement is relevant and not defamatory, but such written statement need not be incorporated in the transcript of hearings. All questions as to qualification of documents, relevancy of material contained therein, and claim of legal right including the relevancy of submitted written questions shall be finally determined by the Attorney General.

4. *Transcript of Testimony.*

An accurate stenographic record shall be kept of the testimony of all witnesses in both exclusive and public hearings. Final determination as to publication of all or part of the testimony given in executive session shall be made pursuant to the authority of chapter 307 by the Attorney General.

Copies of transcripts of public hearings or of transcripts publicly released in lieu thereof shall be available for purchase from the stenographer reporting to same by any person. Witnesses (and counsel) shall have the right to inspect the complete transcript of their own testimony given in executive session but are required to keep such testimony confidential until and unless it is later made public by the Attorney General.

5. *Rules of Evidence.*

Being a fact-finding investigation in aid of the legislative process, judicial rules of evidence will not apply. As far as possible, all evidence shall be relevant and limited to testimony of facts

within the knowledge of the witness. Relevancy, pertinency of questions, and admissibility of evidence, shall be determined by the Attorney General.

6. Reports Derogatory to Individuals.

Publication of reports, statements, testimony or findings based thereon, shall not be issued unless found by the Attorney General to be substantially within the purpose of chapter 307 and based upon evidence presented at hearings and under oath.

7. Television and Radio

In the event of request to televise or broadcast a public hearing, witnesses summoned to appear and testify thereat shall be notified of such request in writing by the Attorney General not less than twenty-four hours prior to the date set for hearing. Witnesses requesting that their testimony not be televised or broadcast shall have their request granted, provided the request is made not less than twelve hours prior to the date and hour of the hearing.

8. Service of Subpoena.

So far as possible, all witnesses summoned to testify either in executive session or at public hearings shall be furnished a copy of these RULES OF PROCEDURE at the time service of subpoena is made.

9. Public Hearing.

To protect citizens of the state from irresponsible charges, witnesses are directed to mention the name of no persons in a public hearing until all information concerning those persons in the possession of the witness has been furnished in executive session.

LOUIS C. WYMAN
Attorney General

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IN THE

Supreme Court of the United States

October Term, 1958

No. 34

WILLARD UPHAUS,

Appellant,

v.

LOUIS C. WYMAN, Attorney General, State of
New Hampshire,

Appellee.

On Appeal from the Supreme Court of New Hampshire

REPLY BRIEF

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IN THE

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No. 34

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v.

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New Hampshire,

Appellee.

On Appeal from the Supreme Court of New Hampshire

REPLY BRIEF

I

Appellee seeks to distinguish this Court's decision in *Sweezy v. New Hampshire*, 354 U. S. 234, on two grounds: (1) "This case does not concern itself with the classroom" (Br. 25), and (2) "The *Sweezy* decision in part concerned questions having to do with Communist influences within the Progressive Party" (*ibid.*).

The first point bespeaks a narrow conception of education and its protection under the First Amendment. The prevailing opinions in *Sweezy* do not suggest that the only aspect of the educative process entitled to constitutional protection is to be found within the walls of a university. Indeed, the reference to Socrates in the concurring opinion

of Mr. Justice Frankfurter evokes a far broader conception of education outside institutions of formal learning.

Likewise, the reference of Mr. Justice Frankfurter to "so basic a liberty as his political autonomy," 354 U. S. at 265, cannot be deemed to be limited to the Progressive Party. It connotes a broad right of association which enjoys constitutional protection except where "the subordinating interest of the State * * * [is] compelling." *Ibid.*

Appellee also seeks to confuse the issue by his references to Communism and the "danger with which the State finds itself faced" (Br. 26)—such as the strange remark that "at least a portion of this Court recognizes the menace to the free world presented by International Communism" (Br. 27).

Communism is no more in this case than it was in *Sweezy*. Mr. Justice Frankfurter's description of Professor Sweezy could have been written about Dr. Uphaus:

"Petitioner answered most of these questions, making it very plain that he had never been a Communist, never taught violent overthrow of the Government, never knowingly associated with Communists in the State, but was a socialist believer in peaceful change who had at one time belonged to certain organizations on the list of the United States Attorney General (which did not include the Progressive Party) or cited by the House Un-American Activities Committee * * *" (354 U. S. 234, 258).

Appellee's case references are as inapposite here as they were in *Sweezy*. They involved inquiries as to membership in the Communist Party itself. *American Communications Ass'n v. Douds*, 239 U. S. 382; *Lerner v. Casey*, 357 U. S. 468. They related to governmental facilities or employment. While we believe that even such inquiries are in violation of the Constitution, it is unnecessary to argue that matter. For appellant herein was not seeking government employment or facilities; and he did answer all

questions on communism, indicating, *inter alia*, that he had never been a Communist and had no knowledge concerning Communist Party membership on the part of speakers or guests at World Fellowship.

Appellee's present attempt to minimize the factual situation in *Sweezy* is in sharp contrast with his statement in 1957 subsequent to that decision:

"If this were not enough, the High Court a week ago today denied the right of the legislature of New Hampshire to inquire into the actual content of a required-attendance lecture at a state university by a former professor with a substantial record of association with Communists and Communist-front organizations, who had written that violence to preserve the Soviet system was justified but that violence to preserve the Capitalist System was doubly damned * * * " *National Association of Attorneys General, Conference Proceedings* (1957) pp. 35-36.

In the instant case, as in *Sweezy*, appellee was not interested in Communist Party membership or activities. His inquiry in both cases was directed at persons who joined organizations on so-called subversive lists compiled by the Attorney General of the United States or by the House Committee on Un-American Activities.

This is shown by (1) his listing of such organizations with which appellant was connected (Br. 39-42) (Report to New Hampshire General Court, pp. 135-156) and (2) his assertion as to the "protracted and substantial record of affiliation with, support of, or membership in, repeated organizations cited as subversive or Communist-controlled by Federal Agencies on the part of named individuals who spoke at World Fellowship Inc." (Br. 6); (3) he inveighs against "the ways, wiles and devious practices of the fellow-traveller and intellectual Communist sympathizer, many of whom are far too clever (with the sanction and approval of the Party itself) to be or ever

have been an actual member of the Communist Party" (Br. 9). This is indeed a wide net.*

Appellee's sweeping charges must give way to the realities. The meetings at World Fellowship were open to everyone including appellee; there was no "conspiracy." The guest speakers were known to appellee as his own brief indicates (Br. 6). They are persons of high standing in the community, although their views may differ from those of appellee. There is no evidence that any were members of the Communist Party.** Instead, in the face of this Court's decisions in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, and *Wieman v. Updegraff*, 344 U. S. 183, appellee has calumniated them almost exclusively because of their association with organizations on the so-called "subversive lists" or their activities in the YMCA, as Quakers, as social workers, as conscientious objectors or for reasons undisclosed.† None of the organizations cited by

* One is appalled by appellee's conception of subversive activities and his indifference to constitutional right. The following is a fair example: "If we in New Hampshire or you in Texas or California, wish here to express curiosity concerning the use of money from such subtle advocates of the slanted approach as the Fund for the Republic, Inc., this is our sovereign right * * *". *Proceedings of the Conference of the National Association of Attorneys General* (1955), page 30.

** The claim is made that the guest speakers were "persons whose entire record indicates consistent support of and affiliation with Communism, from the Communist Party to Communist-infiltrated and front organizations" (Br. 33-34). This charge is untrue and unsupported by the record. What appellee really means is that some speakers were associated with groups on the lists compiled by the House Committee on Un-American Activities and by the Attorney General—quite a different matter. The charge of Communist Party membership as such appears to be made against one individual and is based upon his testimony fifteen years ago. See the appellee's Report, pages 145-146, discussed *infra* and in the Appendix.

† This appears from appellee's 1955 Report to the state legislature. Our refusal to consent to the filing of that document is explained in the Appendix to this brief.

appellee in his brief has received the type of judicial hearing which this Court in the *Joint Anti-Fascist* case indicated was a condition precedent to a verdict of guilt. In fact, no listing by the United States Attorney General has as yet received the sanction of the courts.

Appellee's argument that the guest lists are made available by statute to the sheriff's inspection is beside the point. The familiar "guest" statutes, not here involved, are not used by sheriffs to inquire into First Amendment activities. Nor do the sheriffs publish the names of guests with the resulting injury to them. Are not the guests at World Fellowship entitled to the same protection as the book purchasers in *United States v. Rumely*, 354 U. S. 41, the spectators in *DeJonge v. Oregon*, 299 U. S. 353, or the members in *National Association for the Advancement of the Colored People v. Alabama*, 357 U. S. 449?

II

Appellee imputes to us the argument that under *Pennsylvania v. Nelson*, 350 U. S. 497, no state can investigate any "subversive activities" (Br. 5). Quite aside from the difficulty of defining that much abused term, see *United States v. Peck*, 154 F. Supp. 603, it is not necessary for us to challenge the validity of all state investigations thus described.

Our argument is much narrower; that this particular investigation is constitutionally impermissible under the Supremacy Clause because it is directed against sedition in its commonly accepted sense, a subject preempted by the national government.

Appellee—in his own words—was proceeding under the Act of 1951 to find out "whether or not in this state there are any subversive persons or subversive groups or organizations presently in existence" (R. 10).

It would be fanciful to suggest that the Act of 1951 and the investigations made thereunder were directed

against anything but the "World Communist movement" recited in its preamble. Appellee has never claimed that he was investigating a local matter. His brief herein is replete with references to the federal statutes on the subject of international communism (Br. 16, 28, 35); such phrases appear as "the survival of all the States in a free republican form of government under the Federal Constitution" (Br. 7), "the security, welfare and protection of the Union itself" (Br. 9). We agree with appellee's statement that "National security is state security and state security is National security. A threat to one is a threat to both." *Proceedings of the Conference of the National Association of Attorneys General* (1955) page 29.

This is not a subject susceptible of state legislative action so long as the present federal statutes remain in effect. For "Congress intended to occupy the field of sedition." *Pennsylvania v. Nelson*, 350 U. S. 497. In *Commonwealth v. Gilbert*, 334 Mass. 71, the Court held that there was federal preemption even where the crime was charged as having been committed only against the State. It left open the question as to the possibility of "sedition directed so exclusively against the State as to fall outside the sweep of *Pennsylvania v. Nelson*". *Id.* at 75. But no one reading the New Hampshire Act of 1951, concerned as it is with international communism, could agree that it deals with matters "exclusively" against that state. As the Court said in *Gilbert*: "[T]hey are the familiar paraphernalia of Communist agitation for the overthrow of government in general, and cannot be directed separately and exclusively against the government of this Commonwealth." 334 Mass. at 74-75.

The Resolutions of 1953 and 1955 are grounded upon the Act of 1951. In *Nelson v. Wyman*, 99 N. H. 33, 105 A. 2d 756, the State Supreme Court stated:

" * * * If information is acquired which points to the existence of violations of the act, by persons

known or unknown, with sufficient clarity to form a basis for decision as to future legislative action, the Legislature is to be informed. * * * Having made certain Acts unlawful and having classified certain persons as subversives by its 1951 act the legislature seeks through this investigation to secure general information as to the results of that legislation. * * * " (99 N. H. 33, 37-38)

The States' Attorneys General recognized in *Pennsylvania v. Nelson, supra*, that the state power of inquiry into sedition would be adversely affected by this Court's affirmance of the judgment of the Supreme Court of Pennsylvania.

Thus appellee herein filed a brief in this Court on behalf of the Attorneys General of twenty-five states in support of the petitioner in *Pennsylvania v. Nelson, supra*. He pointed out that

"In *Nelson v. Wyman*, 99 N. H. 33, 105 A. 2d 756, the Supreme Court of New Hampshire rejected the contention before it that *Article IV, section 4* of the Federal Constitution, constituted a constitutional grant of authority to the Federal Government to preempt State anti-subversive legislation * * * " (Br. 27).

The New Hampshire Supreme Court, like appellee, has recognized that the investigation was directed against the kind of activities covered by federal legislation. In *Nelson v. Wyman, supra*, where the supersedure issue was raised, the State Court did not suggest that the 1951 state law was directed exclusively against local sedition. Instead it asserted "[t]he well recognized power of a state to regulate the conduct of its citizens and to restrain activities which are detrimental not only to the welfare of the State but of the Nation" (99 N. H. at 48-49).

It added:

"If 'the menace of communist subversion' is 'in the main a danger national in scope' as contended

by the plaintiff, and may be a matter of proper federal concern, the State has an interest of its own in the preservation of its government and is not required to rely solely upon the performance by the federal government of its duty to preserve the State's republican form of government * * *." (*Id* at 50)

"So far as the circumstances of this case have required an examination of the 1951 Act, we conclude that it is constitutional upon its face, as to furnish a basis for the resolution of 1953." (*Id* at 51)

Denying rehearing which had been sought upon the basis of the Pennsylvania case, the New Hampshire Supreme Court said:

"The enactment by Congress of the Smith Act (18 U. S. C. s. 2385) which defines and penalizes sedition and subversive activities against the governments of the United States, the states or any of their subdivisions does not preclude state legislation *on the same subject matter* * * *." (105 A. 2d 756, 769; italics supplied.)

Appellee recites many hypothetical legislative possibilities (Br. p. 5). The recital does not advance his argument since each of these techniques is directed against the international communist movement which is the subject of the many federal prosecutions under the Smith Act.

III

This is a different case from those involving the contempt power which are cited by appellee (Br. 35-36). It involves a matter of conscience, which many have recognized from time immemorial—one's natural revulsion at becoming a political informer.

"The long history of the religiously sanctioned opposition to informing and the betrayal of confi-

dences when it is fully written will help us to understand the present conflict of the conscience on the matter of disclosing names. Even the present survey will sufficiently indicate such a geographical and chronological extent and persistent intensity of opposition to informing on friends and associates that one will be convinced that some fresh demarcation of the boundary between responsible divulgence and conscientious reticence must be drawn by the religious and other voluntarist groups on the one hand and on the other by the courts. An obscure and only partly explored frontier of the conscience of the responsible democratic citizen must be resurveyed. It is apparent that something very vital in the basic tissue of human relationships is in jeopardy." Williams, *Reluctance to Inform*, XIV *Theology Today* (1957) 229, 234-235.

See also *The Universal Jewish Encyclopedia*, Vol. 5, pp 564 et seq.; *The Jewish Encyclopedia*, Vol. 9, pp. 42-44.

Therefore, this is not the ordinary case of the refusal of a witness to answer a question put in the course of criminal or civil litigation. Instead, appellee seeks here to compel appellant to violate well-recognized conscientious principles. This attempt to force appellant to choose between his conscience and imprisonment for life does represent a most cruel punishment. Men of conscience have always preferred to suffer penalties rather than inform upon others. That appellant's feelings are more than justified by the facts in this case, is illustrated by the use made of such information by the Attorney-General in his report to the Legislature where he lists numerous persons who are completely innocent of wrongdoing. These persons, in current parlance, have now been "cited" in New Hampshire.

The warning of the Court of Appeals for the Ninth Circuit is most relevant here in considering the choice offered appellant:

" * * * it is not amiss to bear in mind whether or not we must look forward to a day when substantially every one will have to contemplate the possibility

that his neighbors are being encouraged to make reports to the FBI about what he says, what he reads and what meetings he attends * * * " *Parker v. Lester*, 227 F. 2d 708, 721.

Respectfully submitted,

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November 1958.

APPENDIX

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL

CONCORD

October 31, 1958

Leonard B. Boudin, Esq.
 Rabinowitz & Boudin
 25 Broad Street
 New York 4, New York

Re: Uphaus v. Wyman—No. 34

Dear Mr. Boudin:

Enclosed you will find two copies of the excerpts from the Attorney General's Report of January 5, 1955 referred to in our brief relating to Willard Uphaus and World Fellowship, Inc.

If you have no objection, we will file the required forty copies with the Court and refer to the same during oral argument.

Please notify me of your decision in this regard at the earliest possible date.

Sincerely,

DORT S. BIGG.
 Dort S. Bigg

Encs.

DSB/m

CC—Royal W. France, Esq.
 154 Nassau St.
 New York 4, N. Y.
 Hugh H. Bownes, Esq.
 Lacomia, N. H.

November 6, 1958

Dori S. Bigg, Esq.
Office of the Attorney General
The State of New Hampshire
Concord, New Hampshire

Re: Uphaus v. Wyman—No. 34

Dear Mr. Bigg:

Mr. Boudin and I have given further thought to your request to be allowed to file forty copies of the report of Attorney General Wyman to the New Hampshire General Court with reference to World Fellowship and Willard Uphaus.

In one sense we should be happy to have this record before the Court since it so clearly demonstrates what we have contended, that Mr. Wyman's inquiry was not directed toward Communism or attempted overthrow of government by force and violence, but toward persons of liberal or unpopular opinions whose rights are protected by the First Amendment.

We cannot, however, consent to the submission of a document which is so full of misstatements of fact and refers to prominent American liberals in a way which, if this were not a privileged communication to the legislature, would constitute libelous matter.

The document is full of such misstatements. Some people are named as having been present at World Fellowship who were never there. Other people are listed as belonging to organizations or participating in activities in which they did not engage. An example of the looseness of statement in the report is the reference to me in which I am listed as having been affiliated with or supported organizations I have never heard of. Some of the connections attributed to me were as counsel in litigation. I am Executive Director of the National Lawyers Guild, of which I am proud, and I consider the Attorney General's reference to this

organization to be a good example of the vice of the report. The National Lawyers Guild did come under attack by the Attorney General of the United States but his attempt to list it was withdrawn after the institution of litigation with the statement by the present Attorney General that it could not be supported by the necessary evidence.

Further evidence of the character of the report is contained in the references to such well known liberals or religious leaders as Reverend Lee H. Ball, Clifford J. Durr and his wife, Florence L. Lascumb, Reverend Dryden Phelps and others and in the reference to Professor Struik whose case has been dropped and who is a teacher in good standing at the Master Institute of Technology. The list of persons on page 155 of the report, some of them representatives of foreign governments, teachers or religious leaders, without any indication as to why they are mentioned, is a further example of the dangerous use which Mr. Wymian can make of names. These persons may now be further calumniated upon the basis of having been "cited" to the General Court of New Hampshire.

While for the foregoing reasons we cannot give the requested consent to the filing of the report, we shall not raise any formal objection.

Sincerely yours,

ROYAL W. FRANCE.
Royal W. France

RWF:se

FILED

JUN 27 1958

JAMES R. BROWNING, Clerk

IN THE

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No. 34

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LOUIS C. WYMAN, Attorney General,
State of New Hampshire,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

PETITION FOR REHEARING

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ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

PETITION FOR REHEARING

Petitioner, Willard Uphaus, respectfully petitions for a rehearing in this matter decided on June 8, 1959. In support of the petition, petitioner respectfully shows and alleges:

A. The Court's affirmance of the judgment below is based upon its finding of "the 'substantiality' of New Hampshire's interest in obtaining the identity of the guests when weighed against the individual interests which the appellant asserts" (p. 6).¹

This "substantiality", in turn, is based upon appellee's "valid reason to believe that the speakers and guests at World Fellowship might be subversive persons" (p. 6). Or, as the Court puts it: "Although the evidence as to the nexus between World Fellowship and subversive activities may not be conclusive, we believe it sufficiently relevant to support the Attorney General's action" (pp. 6-7).

¹ Page references are to the slip opinion.

We propose to demonstrate that in drawing these conclusions the Court has been seriously misled by statements in appellee's brief and report to the New Hampshire Legislature.² There is no evidence whatsoever in the record of this case to show a "nexus between World Fellowship and subversive activities".

B. Secondly, the Court's decision is in conflict with many of its prior decisions, particularly during the last several Terms, which uphold the right of privacy and of association, which repudiate the doctrine of guilt by association, and which protect educational freedom. It is particularly difficult to reconcile the decision herein with that in *Sweezy v. New Hampshire*, 354 U. S. 234.

I

There was no evidence of subversive activities or persons at World Fellowship.

In a case predicated upon "valid reason" and "evidence" as to subversive activities, not only the opinion below but the record itself must be examined. The Court will perceive therefrom that the only testimony before the New Hampshire courts was that of appellant himself. Appellee's questions, oral arguments and report are not evidence.³

² Appellee's oral reference to it in the trial court was unsuccessfully objected to by appellant (R. 61). That report, significantly not in evidence in this case, was submitted to the Court by appellee. Our comment upon it, set forth in the Appendix to our reply brief, need not be repeated here.

³ Nor can the record be amplified by appellee's earlier examination of appellant in an independent proceeding not incorporated in this record. Such examination, if before the Court, would show that appellant made complete answers to questions about his own beliefs and activities and denied knowledge that any speakers at World Fellowship were or had been Communists. The record nowhere discloses that such was the case.

The record of appellant's testimony before the trial court referred to below cannot possibly justify this Court's conclusion that there might have been "subversive persons within the meaning of the New-Hampshire Act" at World Fellowship (p. 6). For subversive persons are defined by the Act as persons attempting or advocating the overthrow of the Government by force or violence (*ibid.*). Appellee's criticism of appellant as a pacifist opening the door, by advocacy of non-violence, to the success of the Soviet Union and Communism is the antithesis of the conduct against which the statute is directed. It may be noted parenthetically that appellee's reliance upon this danger from the Soviet Union corroborates appellant's arguments that if a governmental interest were involved it would be federal, not state, in character.

From a rational point of view, only acts taking place at World Fellowship are material upon the issue of the alleged subversion among its guests. Appellant explicitly denied the existence of any "conspiracy" there (R. 64). But appellee showed a significant lack of interest in that subject, his questions being limited to such matters as the availability of radical or liberal literature,⁴ a non-political film on vacations for Russian youth, and the saying of a grace at mealtime⁵ (R. 77-78, 81-83).

The only speeches referred to in testimony were (1) that of Professor Gwynn Daggett "about civil liberties in New Hampshire," (R. 63); (2) that of Miss Florence Luscomb about her own interrogation by a Massachusetts investigating committee (R. 64); and (3) a religious "message from the prophet Isaiah on peace and good will," (R. 67); see also R. 87 on religious teaching.

⁴ Among such others as United States News & World Report and The New York Times (R. 65, 80).

⁵ That this was "a toast to the Revolution" was denied under oath (R. 47, 87). If such trivia are all the evidence that appellee's informants, could produce, the record here is, as Justice Brennan remarks, "very mild stuff indeed" (dissenting opinion, p. 10).

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The guests are surely not proven subversive because appellant cannot expose them to appellee's mercy. The only evidence as to their character is appellant's uncontroverted description of them as "innocent" (R. 15). There is not even any evidence—in contrast to supposition—that any guest was in a "listed" organization.

Here is the testimony:

"Q. Do you know Dr. Uphaus, whether or not they were members of any of these organizations?
A. I think in some instances I did, but that was not on the registration card. We never asked, 'Are you or are you not a member of certain organizations?'"
(R. 38)

The speakers' names were disclosed (R. 60, 95). Appellant did not know whether any speaker had ever been in the Communist Party (R. 39). Their correspondence with appellant was innocuous (R. 54, 84, 85). There was no correspondence with the Communist Party (R. 73). It was "possible" that some were in "listed organizations" (*ibid.*, R. 61, 64). The reference of the Court below to the large number of speakers in "cited" organizations nowhere is borne out by the record.⁶ This is indeed a case where the findings both in New Hampshire and in this Court are based upon the arguments of opposing counsel, not upon the record itself.

Whether the facts, if proven, would have been relevant is the subject of our next point.

⁶ When asked whether one speaker was a member of a cited organization, appellant said, "I think I recall that she was cited as having had those connections" (R. 61). There is one other identification of a writer of an article (R. 66).

The Court's decision is in conflict with its decisions in numerous cases including *De Jonge*, *Joint Anti-Fascist*, *Sweezy*, *NAACP* and *Ullmann*.

A. Sanctions Based Upon the "Lists"

New Hampshire's finding of a nexus is based essentially upon alleged connections with organizations upon subversive lists compiled by the House Committee on Un-American Activities⁷ (herein called the House Committee) and the Attorney General of the United States (herein called the Attorney General). This Court apparently agrees (p. 7).

This Court in *Barenblatt v. United States of America*, October Term 1958, No. 35, upheld the broad powers of investigation of the House Committee. But the instant case adds to these powers the very different function of establishing "probable cause" for conduct by the Attorney General of New Hampshire. We submit that if the appellee lacked power in the absence of "evidence as to the nexus between World Fellowship and subversive activities" (pp. 6-7), the House Committee's clearly unlawful subversive list could not constitute such "evidence" and supply the missing power.

The situation is aggravated by the state court's reliance upon membership in organizations on the Attorney General's list (R. 96, 99). It is true that this Court recognized that the list has the "limited purpose of determining innocence for federal employment" and that "guilt by association remains a thoroughly discredited doctrine" (p. 7). Nevertheless, it indubitably relies upon such a list, stating

⁷ The House Committee's lists, which have no legislative basis, of course, are even more informal than those of the Attorney General and consist of its accusations made in Committee hearings, reports and press releases.

that "the investigatory power of the State need not be constricted until sufficient evidence of subversion is gathered to justify the institution of criminal proceedings" (*ibid.*).

This last statement implies that membership in organizations on the list is *some* evidence of subversion. To recall the purposes of the Attorney General's list, its standards and underlying procedures (*and that no organization on it has been held by due process after a judicial hearing to be subversive in fact*), is to be appalled at the new destructive power given to the list. Such reliance upon the Attorney General's list is to disregard this Court's decisions in *Joint Anti-Fascist Committee v. McGrath*, 341 U. S. 123 and *Barsky v. Board of University of State of New York*, 347 U. S. 442.

In the first case Mr. Justice Frankfurter, concurring, noted that

"designation has been made without notice, without disclosure of any reasons justifying it, without opportunity to meet the undisclosed evidence or suspicion upon which designation may have been based, and without opportunity to establish affirmatively that the aims and acts of the organization are innocent." (p. 161)

In *Barsky*, Mr. Justice Frankfurter, dissenting, stated:

"If the Regents had explicitly stated that they suspended appellant's license or lengthened the time of the suspension because he was a member of an organization on the so-called Attorney General's list, and the New York Court of Appeals had declared that New York law allows such action, it is not too much to believe that this Court would have felt compelled to hold that the Due Process Clause disallows it. See *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 104 F. Supp. 567." (347 U. S. at 471)

* The decision of the Court was based upon the conclusion that the Board of Regents "was not influenced by the character of the Refugee Committee" (347 U. S. at 455).

B. Sanctions Based Upon the Privilege

Appellant's assertion of his constitutional privilege before a congressional committee was also regarded as evidence of subversion by the court below (R. 99).⁹ The subsequent amendment of its opinion (R. 114-115) cannot derogate from the fact that its conclusion was in fact based upon an inference deemed constitutionally impermissible by this Court. *Ullmann v. United States*, 350 U. S. 429.

New Hampshire did precisely what this Court through Mr. Justice Frankfurter warned against in *Ullmann*: "Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers" (350 U. S. at 426).

C. Guilt by Association Rejected and Applied

Appellee's theory, apparently accepted by this Court, is that the presence of political "undesirables" can render suspect even a lawful assembly. This doctrine cannot be squared with the considered refusal of the Court in *De Jonge v. Oregon*, 299 U. S. 353, to infer De Jonge's guilt from his presence at an avowedly Communist meeting.

The Court's acquiescence in the doctrine that guilt by association may be inferred at least to justify loss of the constitutional right of privacy is indicated by the following language: "The record reveals that appellant had participated in 'Communist front' activities. * * *" (p. 7). We have already indicated that the "record" reveals no such thing unless appellee's unsworn arguments and reports are the equivalent of testimony (*supra*, pp. 2-4). We note with respectful surprise the Court's use of this polemical term not hitherto in the judicial lexicon. Is "Communist front" to be added to such other vague and undefined terms as "subversive," "un-American," and "unpatriotic?"

⁹ This is another example of imparting into the case matters not of record. If testimony on the point had been taken, appellant would have had an opportunity to explain his position.

Surely such invidious and undefined terms open the flood-gates for substituting adjectives for proof to the ultimate destruction of the guarantees of freedom of association of the First Amendment.

D. The Attempted Distinction Between This Case and *Sweezy*

One sentence was used to dispose of *Sweezy v. New Hampshire*, 354 U. S. 234, which we had believed controlling: "First, the academic and political freedoms discussed in *Sweezy v. New Hampshire*, *supra*, are not present here in the same degree since World Fellowship is neither a university nor a political party" (p. 5).

Academic freedom is not limited to institutions that give degrees. World Fellowship "is a center for educational and religious purposes" (R. 70). Its right to teach and its guests' right to learn are on the same constitutional level as New Hampshire's university and those connected with it. Indeed, Socratic education had its origins not in an incorporated university but in the streets of Athens. Emerson said: "My pulpit is the lyceum platform" (Bradford Smith, *A Dangerous Freedom*, 1954, p. 179). Today "[t]he informally organized impulse to better ourselves by deliberately providing all men and women with chances to grow and learn, this movement called adult education touches the lives of Americans at many points" . . . (Lyman Bryson, *The Drive Toward Reason* (1954), p. 93).¹⁰

¹⁰ See also Johann Heinrich Pestalozzi, *The Education of Man* (1951), p. 32; M. T. Harrington, Pres., Agric'l. & Mechanical, Texas, *Commencement Address*, June 1952; Edward A. Fitzpatrick, Pres., Mount Mary College, *Commencement Address*, June 1952; James Russell Lowell, *My Study Windows* (1884); W. G. S. Adams, Warden of All Souls College, Oxford, *Adult Education and Democracy*, American Association for Adult Education (1936), p. 7; Alvin Johnson, *Adult Education and Democracy*, American Association for Adult Education (1936); Jesse Steiner, *The American Community in Action* (1928); Alexis De Tocqueville, *Democracy in America* (1889).

We regard this case as even stronger than that of *Sweezy* in view of the religious nature of the program at World Fellowship. That aspect will be developed fully in the event of rehearing. At this point it is sufficient to remind the Court that religious institutions have been one of the most fertile sources of education in Western Civilization. There is no possible justification for depriving religious groups, informal though they be, of the right to self-education while upholding that right for secular institutions such as the University of New Hampshire.

While World Fellowship is not a political party, the political freedoms of Americans have historically been exercised by political assemblies and by associations with specific political and social objectives. Bradford Smith, *supra*. Such associations have been among the most useful instruments in the functioning of American democracy. Alexis De Tocqueville, *Democracy in America* (1889). World Fellowship was under investigation precisely because appellee claimed that it permitted political activities upon its premises. This is analogous to *Sweezy* where appellee argued that the Progressive Party (like World Fellowship) was infiltrated by Communists.¹¹

E. New Hampshire's Interest in Invading Privacy

The Court described as "tenuous at best" the "associational-privacy" herein involved. It made a value judgment as to the different kinds of protection to be given to the National Association for the Advancement of Colored People, on the one hand, and to World Fellowship, on the

¹¹ Professor Sweezy refused to answer questions with respect to the Communist Party as such, a charge not made by appellee against appellant herein.

other. We respectfully submit that such a judgment is beyond judicial competence.

The Court's opinion in *Barenblatt* and the concurring opinion in *Sweezy* suggest that the Communist Party is beyond the pale in that there is no right of privacy among individuals suspected of communism. *Uphaus* consigns to the same fate, first, organizations placed *ex parte* upon "subversive lists" and, then, World Fellowship, which is on no list except that now created by appellee.

The Court suggests that the "associational privacy" of the guests is to be lost because the camp was a public one maintaining a register of guests open to inspection of sheriffs and police officers (p. 8). The New Hampshire guest law is the familiar innkeeper statute designed for very different purposes than the current investigation; it does not authorize appellee or anyone else to examine, much less publish, the lists. The Court has correctly pointed out that "the lists sought were more extensive than those required by the statute" (p. 8, fn. 7).

The function of the guest lists in the hands of appellee, viz., the creation and publication of a new subversive list of suspected persons, is quite different from the inspection which the sheriff might make under the statute. The sheriff's right to inspect did not make the listing a "public record" available to every reader in New Hampshire and elsewhere of appellee's listing.

The Court suggests that "the governmental interest in self-preservation is sufficiently compelling to subordinate the interest in associational privacy herein involved" (p. 8). No one has yet suggested how exposure of the names of guests will protect New Hampshire's security. Appellee possessed the names of all the speakers; he claimed to have the names of many guests. Not a single one was subpoenaed in this investigation of World Fellowship. In what way would the addition of a few more names of guests aid the legislative process?

This Court indicated quite clearly in *United States v. Rumely*, 345 U. S. 41, constitutional doubts as to the compelled disclosure of the readers of certain literature. Is there any legal distinction between their status and that of the guests who came from the highways to lodge and learn at World Fellowship? The opinion herein appears to adopt the view of the Court of Appeals in *Rumely* that if the books involved in that case had been "left-wing" rather than "right-wing" their readers would have been unprotected (197 F. 2d 166, 173). We submit that this is a double standard—irreconcilable with the equality of treatment required by the Constitution.

CONCLUSION

There are issues of fundamental importance in this case. The Court's opinion represents a major shift from constitutional doctrine of the past. It is based upon an assumed "nexus" which is not only not supported by, but is contrary to, the evidence. We respectfully urge that we be granted the opportunity to present these issues more fully upon a rehearing of the case.

Dated, June 25, 1959.

Respectfully submitted,

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I, ROYAL W. FRANCE, do hereby certify that I am counsel for the petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

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June 25, 1959.